United States Court of Appeals for the Second Circuit

APPENDIX

77-1150

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

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ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York,
One St. Andrew's Plaza
New York, N. Y.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,
345 Park Avenue,
New York, N. Y. 10022.
(212) 644-8000.
of Counsel,

CURTIS, MALLET-PREVOST, COLT & MOSLE,
100 Wall Street,
New York, N. Y. 10005.
(212) 248-8111.

STANLEY S. ARKIN, P.C.,
600 Third Avenue,
New York, N. Y. 10016.
(212) 869-1450.

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Q What areas did the salesman show you with regard to lots?

A First he took us all around Rio Rancho and then he took us home with him. He lived in the Golden West condominiums because he thought, seeing as little as I did, that might be most convenient and we didn't like it because it was too much like an apartment.

He showed us some lots in 16 and some in Corrales Heights.

Q You chose Panorama Heights?

A Yes, we did because I insisted and my husband that I had to be in walking distance to the shopping center.

Q You had to pay a few extra thousand dollars for the lot in Panorama Heights?

A That is true.

Q Was that lot smaller than the half acre lot you switched?

A Yes, it was. It is between a quarter and a third of an acre.

Q Did you feel you were cheated?

A No. No, we didn't.

Q Why did you feel you were paying the extra money?

A Well, we are two blocks off the golf course. It is really a beautiful section. It is very close to the shopping center and ti is a more valuable property than the other sections are.

Q What type of utilities do you have in Panorama Heights?

A Underground.

Q What was the total cost of your house and lot in Panorama Heights?

A Well, the house was $27,000 and the property itself 5,000.

Q What do you think your husband would get on the market today?

MS. HYNES: Objection.

THE COURT: If she has any basis for it.

Q Do you know what prices similar homes have gone for on the market?

A I do.

MS. HYNES: Objection.

THE COURT: Overruled.

Q What prices are those?

A Well, houses in the street below us some of them have sold above $50,000 let's say, 50 or 52,000.

Q Is that what you think you can get?

A I am not sure at the moment, but I wouldn't sell it below 48,000, that is for sure.

Q You got a half acre of residential property?

A Yes, we have.

Q What do you plan on doing with that half acre?

A Well, we would like one of our nieces to have it and she would like to buy it.

Q Was one of the reasons you decided to move to Rio Rancho the lower taxes?

MS. HYNES: Objection.

A It was part of it.

THE COURT: Wait.

THE WITNESS: Sorry.

THE COURT: Objection sustained.

Q What were some of the reason that you decided to move to Rio Rancho?

A Primarily my health, but the lower taxes also had something to do with it.

Q Are the taxes lower in Sandoval County?

MS. HYNES: Objection.

THE COURT: Overruled.

A Sandoval County has much lower taxes. The taxes are much lower in Sandoval County than in

Bernalillo County.

Q Do you know people in Paradise Hills in Bernalillo County who have homes similar to yours?

A I know at least two people who have similar homes to ours. In fact, one has a smaller home.

Q How much do they pay in real estate taxes?

MS. HYNES: Objection.

THE COURT: Sustained. She has made the point.

A Almost double.

THE COURT: Wait.

THE WITNESS: Sorry.

I didn't hear.

THE COURT: It's all right.

THE WITNESS: It is my first experience.

THE COURT: Sit back and enjoy it.

THE COURT: I am not really enjoying it.

Q Has your health improved since you moved to Rio Rancho?

A Yes, a great deal.

Q What do you do with your time in Rio Rancho?

MS. HYNES: Objection.

THE COURT: Sustained.

Q Has the company ever failed to keep a promise it made to you, Mrs. Vives?

A No, not to us, they have never failed.

Q Do you feel you made a wise decision in moving to Rio Rancho?

A Yes, and I am sorry we didn't move earlier.

Q You feel you made a wise decision in buying as much land as you did?

A Yes.

Q Would it be fair to say that moving to Rio Rancho has improved your life?

MS. HYNES: Objection.

THE COURT: Sustained.

A Yes -- I am sorry, I cannot answer that.

MR. LAUER: No further questions.

THE COURT: You may cross examine.

MS. HYNES: Thank you, your Honor.

CROSS EXAMINATION

XXX BY MS. HYNES:

Q Mrs. Vives, my name is Patricia Hynes and I represent the government in this case.

How much land do you presently own at Rio Rancho?

A Aside from where we live?

Q Yes, apart from your house and lot in

Panorama Heights?

A We have half an acre left in 9.

Q Unit 9, yes.

A And we have two multiple dwelling lots in 11.

Q Now, you bought the two multiple dwelling lots in Unit 11 in 1966, is that right?

A That is right. That is when we made an exchange.

Q You bought your first piece of property in Rio Rancho in 1962, is that correct?

A That's correct.

Q That was as a result of receiving material through the mail?

A Yes, and then later on we saw some more advertisements. That was after already we had decided to buy.

Q After you received the communications in the mail and before you bought the property you testified that your husband did some research about the climate?

A Yes, that is true.

Q When you bought the property at Rio Rancho in 1962 you were buying it to relocate at Rio Rancho, is that correct, because of your health?

A With that in mind.

Q You bought it with that in mind?

A Yes.

Q You bought at that time what, a half acre?

Q When did you buy your next piece of property?

A In 1964.

Q That was when you visited Rio Rancho?

A Yes.

Q You bought it at the property, you bought that piece of land at Rio Rancho?

A No, we didn't buy it at Rio Rancho, no. We just visited there.

Q I am just a little confused.

Where did you buy your second piece of property? Was it back in New York or was it when you were in Albuquerque?

A No, it was back in New York. It was not in Albuquerque.

Q You bought your first piece of property, you visited Rio Rancho, you came back to New York and then did you go to a sales dinner?

A I don't quite recall that.

THE COURT: Where did you buy the land, the second purchase?

THE WITNESS: The second purchase, it was done from New York.

THE COURT: Do you know how or where?

THE WITNESS: My husband bought it through the mail. He wrote for it.

Q When you bought your first piece of property you told Mr. Lauer that was in 1962 that you understood your exchange right?

A Yes.

Q Mr. Lauer asked you if you also understood about extra amenities in 1962. Was there any information given to you about extra amenities?

A How do you mean that?

Q You answered Mr. Lauer's question that you understood in 1962 that you had to pay additional money for extra amenities?

A Oh, yes, that is true.

Q Was there any area -- withdrawn.

You visited Rio Rancho in 1964, is that correct?

A Yes.

Q Did you visit the area that had houses?

A Yes.

Q Was there any charge for extra amenities in 1964 to exercise an exchange?

A No, I don't believe at that time.

Q In fact, there wasn't any charge until 1971 when Corrales Heights was opened up, is that correct, and Panorama Heights thereafter?

A Panorama Heights thereafter I knew we would have to pay towards it.

Q You had to pay extra?

A But I am not too sure about Corrales Heights. There are certain sections I understood that would have been an even exchange.

Q I am sorry?

A There was a certain section in Corrales Heights where I believed you could have made an even exchange.

Q But in any event in Panorama Heights and perhaps in some sections in Corrales Heights there was an additional charge to exchange into there?

A Yes, we knew that.

Q Those areas weren't opened up until sometime in the early seventies, is that correct?

A That is true.

Q Prior to that the areas where you could exchange into were Unit 16?

A Yes.

Q And there was no extra charge to get into Unit 16?

A There would have been an extra charge -- there would have been no extra charge.

Q So in 1962 there was no area where there was an extra charge to exchange into, is that correct?

A That's correct. That is how I understood it.

Q So you understood that you had an even exchange right in 1962?

A In those years, yes, I believe so.

Q You eventually attended a dinner in 1966, is that correct?

A Yes.

Q At that time you had already visited the property, is that correct?

A Yes.

Q At that time you had already made a decision to relocate to Rio Rancho, is that correct?

A Yes, after we had seen the property, we definitely decided that would be it.

Q You testified that when you attended the dinner in 1966 there wasn't a sales person at your dinner?

A No, there was not at our table.

Q Were you there as a property owner? Were you invited to the dinner as a property owner?

A In '66?

Q Yes.

A No, we were not invited as a property owner. We just received an invitation through the mail addressed to my husband and myself to please come, that they would have a dinner there, which was on Union Turnpike, and would we please come.

Q When you went to the dinner, there wasn't a sales person at the table, but you bought an acre at that dinner, is that correct?

A Yes, we did.

Q You said that the sales person stood up and called a hold on that acre that you were buying.

A Not our sales person. There were some sales people, either a lady or a man, I don't recall, there were some who every so often when a certain piece of property was mentioned, they would raise their hand and would say, there is a hold on this property or the people are interested in it or he had previously had a reservation on that.

Q I understand.

Did a sales person eventually come over to your table? How was it you bought that acre in 1966 at the dinner?

A After a lot of people had left, mostly the people who did not want to buy at that time we were there and a gentleman came to us and said, are you intersted in land and we said yes and he said, if you wait a short while, one of the salesmen will be free.

Shortly after the salesman came over and introduced himself, I forgot his name, and we sat down at the table.

Q There were too many people and only a few sales people, is that correct?

A I beg your pardon?

Q There were not enough sales people to go around, is that correct?

A That is true.

Q You said that you listened to a presentation at that dinner in 1966.

A You mean the film?

Q The film and there was also a speaker in the front of the room.

A Yes.

Q And he gave a presentation, is that correct?

A Yes, he told us about the area.

Q You said that he told you about the foothills in the northeast section of Albuquerque?

A No, he didn't really mention the word foothills, which I don't think would have meant anything to us, but he talked about that particular section of Albuquerque.

Q What particular section of Albuquerque?

A The northeast, which I now know as the northeast section.

Q You have been living at Rio Rancho for a few years, correct?

A Three years and four months.

Q Since you have lived out there you know about the northeast section of Albuquerque?

A Oh, yes.

Q The dinner that you attended in 1966, you didn't know about the northeast section then, did you?

A Well, it didn't really mean much to me, if it was the northeast section or which. I only knew it as the whole section where the mountains were.

Q Do you recall that the salesman said that there were mountains to the east that blocked growth?

A Yes.

Q And that is what the salesman said and do you also recall that the salesman said that the only direction that Albuquerque could grow was to the northwest through Rio Rancho because it was blocked on three sides?

A That is true.

Q Do you recall that the salesman said, I am reading from 316 at page 14 --

MR. ARKIN: Let us get our copy of 316, page 14.

MS. HYNES: You can look at mine.

MR. ARKIN: I will get my own.

MS. HYNES: 316 in evidence, page 14.

MR. ARKIN: Do you have a date on that?

MS. HYNES: The date on it is 1966, June 7, 1966.

Q Do you recall that the speaker in the front fo the room said, "Do you know that Albuquerque is surrounded on three sides on which it cannot build. The City can only expand in one direction and that direction is squarely through Ric Rancho Estates."

Do you recall that being said in substance at the dinner that you attended?

A Not exactly that way. I realize now since I live there --

Q I am trying to direct your attention to -- is the answer yes or no?

A Well, I can't answer that with yes or no.

THE COURT: She said not exactly that way.

Q In substance was that what was said to you?

A The substance was that New Mexico has so much forest land and Indian land and land grants where no one could build and there is only one section in which Albuquerque can still grow, then it has to go out towards the northwest. That is where Rio Rancho is.

Q Do you recall at the dinner that you attended in 1966 that in addition to the film that you were shown that you were shown a chart that showed various investments?

A How do you mean "investments"?

Q Do you recall being shown a chart that showed investment in stock and compared an investment in land with an investment in stock and money in the bank?

A I don't recall that. There might have been, I don't recall it.

Q You said that you had trouble with your vision?

A Yes.

Q When did that trouble begin?

A A few years after we returned from Albuquerque, from New Mexico I realized my vision was dimming.

Q That was not at the time you attended this dinner, though?

A Yes, it started, but I didn't know then that I was going blind.

Q There came a time when you exchanged residential property you testified for multi-dwelling land, is that correct, two multi-dwelling lots?

A Yes, after we had bought land we got brochures and later on the first editions of the Roadrunner and we noticed where it said in these papers that 11 was being developed and that land was available now for commercial use and multiple dwellings.

Q You, in fact, wrote to the company and asked to buy some commercial land in an area close to the proposed shopping center, correct?

A No, we received another invitation for a dinner and we decided to go there and see if we could buy some commercial property, but we were too late already and there was very little property left in the multiple dwelling sections.

Then we asked the salesman could we trade land for these properties and these two lots and he said, yes, but that they are more valuable and you would have to pay towards them.

Q What reason did he give for the multiple dwelling lots being more valuable?

A Because you were able to put up at least two family homes or larger depending upon how you developed it.

Q Did the salesmen tell you that the multiple dwelling lots would be income producing?

A Yes, they naturally had to be.

Q Therefore they would be a good investment for you?

A Well, we found it a good investment. He didn't have to tell us that.

Q You bought those multiple dwelling lots when, in 1966?

A Yes, we exchanged.

Q Have you put up any multiple family dwellings on those two lots todate?

A No, we haven't.

Q That is the answer to my question, thank you.

Do you have any children?

A No.

Q When you bought the multiple dwelling lots in 1966 was that to be income producing -- that income to be used by you and your husband, is that correct?

A Yes, if we would decide to build there or eventually sell.

Q If you would put a two family house on it?

A Right.

Q Have you tried to sell your multiple dwelling lots?

A No, we haven't been interested in selling it.

Q When was the last time you went out to see your multiple dwelling lots?

A Let me think for a moment. I would say about -- this is January -- the very end of October, the very beginning of NOvember.

Q Of 1976?

A '76.

Q Were those multiple dwelling lots, were they located about two miles from where building is presently taking place in Unit 11?

A I cannot really tell you the mileage. I only know that knowing Rio Rancho that is about three or four blocks away from the building that is going up.

Q When you say "blocks", what do you mean?

A Well, they are not like city blocks. They are a little longer, but to me they represent, I mean that stretch of land between the new dwellings and our property is about three or four blocks.

Q How long does it take you to reach your multiple dwelling lots when you are driving after you leave the area that has houses in Unit 11, how long a drive is it?

A I would say about five to seven minutes, if not less. Maybe a little less.

MS. HYNES: If I can just have a moment, your Honor.

May I have this marked as Government Exhibit 2008 for identification?

xxxx (Government Exhibit 2008 marked for identification)

Q Showing you Government Exhibit 2008 for identification, are you able to see your signature?

A May I take my glasses. I can't see without them.

Q Yes. Look at the top, is that your contract for your purchase of Unit 11 multiple dwelling lots in Block V?

A Yes.

Q If you want to step down, Mrs. Vives, Block V is approximately here in Unit 11, is that correct?

A I honestly couldn't tell you.

MR. ARKIN: Are you referring to an exhibit, Ms. Hynes?

MS. HYNES: Exhibit 93.

MR. ARKIN: The record shoulw reflect the portion of the exhibit.

Q I am referring to Unit 11, Block V.

A I can't see that.

Q On this Exhibit 93 --

THE COURT: Wait a second, you have to keep your voice up because the court report can't hear you.

THE WITNESS: I can't make out roads or anything on this map and I asked to be told near what road it is, near what street.

Q Exhibit 93 are the blocks, not the lots, but the blocks in Rio Rancho and this is Unit 11.

A Yes.

Q When you say that your commercial property is about three blocks from where the houses are, you are referring to these types of blocks that are on this map, is that correct?

A Yes, if our lots are in those blocks, I would say that they are about three to four blocks or four blocks all together away from the new buildings that are going up now.

MS. HYNES: Mr. Arkin, will you stipulate that this is Block V in Unit 11?

MR. ARKIN: It appears to have VV on it.

MS. HYNES: At the top it has V?

MR. ARKIN: I think it is VV, Ms. Hynes.

THE COURT: Ms. Hynes, you have asked for a stipulation. Either he gives it to you or he doesn't.

MR. ARKIN: It is an area on the map, if your Honor please, below the symbols which appear to be V, VV in a triangular fashion.

THE WITNESS: Is that Northern Boulevard.

MS. HYNES: I will ask you to resume the stand, Mrs. Vives.

THE COURT: You made some reference to Northern Boulevard, is that where your lots are?

THE WITNESS: Yes, it is in that direction. It is not too far from Northern Boulevard, your Honor.

THE COURT: Go ahead.

MS. HYNES: May we have marked for identification as 2009.

(Government Exhibit 2009 marked
for identification)

xxx

Q Mrs. Vives, can you look at this 2009 for identification and tell me if you recognize the handwriting?

A It looks like my husband's if I am not mistaken. It looks like my husband's to me.

MS. HYNES: We offer 2009.

MR. ARKIN: May I see it?

MS. HYNES: And we will offer 2008.

MR. ARKIN: Let's take one at a time.

MR. LAUER: There is no objection to 2008.

(Government Exhibit 2008 received
in evidence)

x

THE COURT: Let me see it, please.

(Pause)

MR. LAUER: We have no objection to 2009.

(Government Exhibit 2009 received
in evidence)

x

Q Mrs. Vives, let me show you what has been marked in evidence 140-L.

Did you receive anything similar to this when you purchased your property back in 1962?

A I am not sure. We received a lot of something like this and I don't know whether it was similar or this that we received in 1962. It's a little too long ago.

Q Mrs. Vives, how old are you?

A I am sixty-seven.

Q How old is your husband?

A The same age, a little younger, a few months.

Q When you bought your two multiple dwelling lots in Unit 11, did you know that they were not in the building area that had been set aside by the company?

A Yes, we knew.

Q Did you know that the company was not obligated to put water or any utilities in those commercial lots?

A That's correct.

Q You paid more for the commercial lots than for your residential lots?

A That is true.

Q You say that you understood that the company was not obligated to put water or utilities or electric in those lots; is that correct?

A That is what we understood.

Q How was water and utilities going to be brought to that lot and who was going to do it if the company wasn't?

MR. ARKIN: May we have one question at a time, your Honor.

THE COURT: Yes.

MS. HYNES: I am sorry.

MR. ARKIN: Also, if your Honor please, I object to the question on the grounds that there is no foundation for it.

MS. HYNES: The witness has just testified.

THE COURT: The objection is sustained. She said she knew they didn't have to come in. How they would get in doesn't make any difference.

THE WITNESS: We knew --

THE COURT: Wait a second.

Q You expected to be able to use those multiple dwelling lots to put two family houses on them, correct?

A Yes.

Q The two family houses would have to have utilities, is that correct?

A Yes.

Q Did you understand that you would have to put utilities on those lots, extend utilities to your multiple dwelling lots?

A I am not too sure about that at the moment, but we knew that once this piece of land, this unit was being developed, water and electricity and gas and telephone had to be put up there so it wouldn't have been really such a great deal to extend it to our lot.

Q My question to you previously --

THE COURT: She has answered it, Ms. Hynes.

Q When you wrote to the company in 1966, and I am reading from 2009, I believe you testified it is your husband's handwriting?

A Yes.

Q You said, "I am planning for the future, I am interested in learning from you if it is possible to make an exchange of both above half acres for multiple dwelling two family 100-foot frontage property which I understand is in Unit 11 in the commercial area."

Then it has AA and BB.

You were not able to get that land, is that correct?

A I beg your pardon?

Q You were not able to get that land?

A We couldn't get a commercial piece of property.

Q "I would like it near as possible to the proposed shopping if possible within walking distance."

A Yes.

Q Is that what you asked for?

A Yes, and he had my eyesight in mind at that time.

Q When you bought those commercial and multiple dwelling lots then you believed that the company was putting in a shopping center close to those lots, is that correct?

MR. ARKIN: Objection.

THE COURT: Sustained.

A Well, it was --

THE COURT: Wait. Sustained.

Q What did you understand was going to be in the area near the commercial and multiple dwelling lots that you were buying?

A Well, to me a commercial --

THE COURT: Wait a second, this is merely an inquiry as to where. You are assuming she already had these two lots. She didn't.

Q After you wrote this letter to the company, you bought commercial and multiple dwelling lots, is that correct?

A Yes.

Q You bought those in Unit 11?

A Yes.

Q Did you believe that those lots that you did buy were close to a proposed shopping center?

A Well, we knew it was very close to the commercial section and commercial section to me can mean a lot of things. It can mean something else to somebody else, I don't know.

Q Did you believe it was close to a commercial section in the building area set aside by the company?

A Would you please repeat that?

Q Did you believe that those lots were near a building area set aside by the company?

A Yes.

Q In fact, you know that they are not within that building area today, you know that?

A That is true. We know there wouldn't be that particular building area according to the map, we realized that.

Q Did you believe it would be within another building area?

A It is -- that question is really hard to answer. I wouldn't know how to answer that.

THE COURT: When you bought this property, you knew it was not in the building area?

THE WITNESS: Yes, that is true.

Q When you bought the property, the commercial and multiple dwelling property, did you believe that the company would eventually develop it?

A Eventually, yes.

Q Eventually. So then you believed that the company did have an obligation eventually to put water and utilities in those lots?

MR. ARKIN: Objection.

THE COURT: She did not say that. She said it would be close enough for her to hook on to it. That is what her testimony was if you listened to it.

MS. HYNES: I am entitled to question.

THE COURT: She answered the question flatly and you are asking the question as thought she didn't.

Q What was your understanding about a hookup? Did you testify about a hookup, Mrs. Vives?

A I testified to that before.

THE COURT: Yes.

A You asked me.

Q What is the hookup?

A My answer was that as that section would be developed, whatever would have to be connected, water, electricity, telephone, would be close enough to get into or hook up to whatever you want to call it.

Q Is there central sewage in Unit 11, central sewage system?

A The new buildings that are going up now will have sewers. Whatever is being built from now on I understand to have sewers.

Q In Unit 11?

A In Unit 11.

Q Those are lots that are roughly about a quarter of an acre or less in size?

A I can't really say how big those pieces of land are.

Q You still own in addition to that commercial property, you own additional residential property, is that correct?

A Yes, a half an acre.

Q You testified that that half acre you hope your niece will use?

A Yes, she will have that, yes.

Q Your niece will use that to move out to Rio Rancho, is that your hope?

A Well, she has expressed desire, but she is young and we don't know whether she will eventually move there.

Q Did you ever try to resell your half acre of residential property?

A No.

Q Mrs. Vives, the commercial property that you bought ten years ago --

A Excuse me, we didn't buy commercial property.

Q I am sorry, multiple dwelling, correct?

The multiple dwelling property that you bought ten years ago still does not have utilities, that is what you testified to, correct?

A Yes, that's correct.

Q Utilities are still quite a distance from that multiple dwelling property you referred to?

MR. LAUER: I object. There is no foundation for that.

THE COURT: I don't know what quite a distance is. I don't know where they are.

Q You say it is five to seven minutes driving distance?

A Yes, but that doesn't mean that utilities haven't gone out a little further than they are building.

They often do.

Q The utilities are within the building area that has been set aside by the company, that you are sure of?

MR. LAUER: Objection.

MR. ARKIN: Objection.

THE COURT: Sustained.

A That is confusing.

THE COURT: Wait, sustained.

Q Mrs. Vives, do you know when utilities will reach your multiple dwelling lots?

A No, I don't.

MS. HYNES: I have no further questions.

THE COURT: Any redirect?

MR. LAUER: Just a few questions, your Honor.

REDIRECT EXAMINATION

XXXX BY MR. LAUER:

Q Do you know that the water lines are alresady out to your property?

A Where?

Q The water lines, have they not yet reached your property?

A I am not sure. We haven't inquired as to that.

MS. HYNES: She has testified that they haven't.

THE COURT: He asked her the question, do you know if the water lines have reached your property and she says no, she doesn't know.

THE WITNESS: I said I don't know.

THE COURT: You have made statements of fact and he is trying to counteract them, Ms. Hynes. I don't know what your objection can be.

Go ahead.

Q When you exchanged into the multi-dwelling lots in 1966, what was out at Unit 11? Were there a lot of houses?

A I think they had begun to develop them, but I don't know that there were many houses. We weren't out there since 1964.

Q Did you know how far your multi-dwelling lots were from the houses?

THE COURT: When she purchased the multi-dwellings?

Q When you exchanged into them.

A No, we didn't really know.

Q Did you have an idea?

A No, we knew where the lots would be located, towards Northern Boulevard, and to tell you truly, we weren't that much interested how far the development had gone there.

Q Did anybody at the company at any time tell you when specific development would take place in Unit 11?

A At no time, neither Unit 11 nor any other.

Q Did anyone ever tell you when a building was going to be built, a shopping center or a commercial building, did anybody give you a specific time?

A No, they only mentioned that when the time came that there were enough people, it would be built. Talking about the shopping center.

Q If there was demand?

A And that the land had been set aside for it, yes.

Q Was it your expectation that at some point in time the development would reach your multi-dwelling lots?

A Yes, after we had seen -- after we had been there in '64, we realized the potential of it and we could not put a finger on a date, but we knew that eventually it would come to that point.

Q You testified that you thought about putting up two family homes on the multi-dwelling lots?

A Yes, we had the intention.

Q Is there any particular reason why you have not built those homes yet?

A Well, we hadn't been thinking about it for a while, but we are thinking a little bit about it now because it is growing so rapidly out there and we feel that eventually, perhaps not in the too far future we might be able to either build or if we feel we are a little too old for that, we might sell.

Q You think your multi-dwelling lots were a good investment?

A Marvelous investment.

MR. LAUER: Thank you, Mrs. Vives.

THE COURT: He may have another question.

THE WITNESS: I have lived through it so far.

I wish somebody would come out there and see how beautiful it is.

Q Do you know now whether development in Unit 11 is now closer to your multi-dwelling lots than it was in 1966?

A Definitely.

Q Much closer?

ojw

A Much closer.

MR. LAUER: I have no further questions.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: We will adjourn for lunch. Return at 2:15.

(Luncheon recess)

end t

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

THE COURT: Proceed.

MS. CROSS: As the next witness, the defendants will call Grover Nash.

GROVER E. NASH, called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CROSS:

Q Mr. Nash, what is your address?

A 4102 La Colorado Court, Rio Rancho, New Mexico.

Q And how old are you?

A Fifty-five.

Q Are you married?

A Yes.

Q And do you have any children?

A I have.

Q How many do you have?

A Two.

Q And doesyour wife have any children by a former marriage?

A She does.

Q How many?

A Two.

Q Were you in the military service?

A I was.

Q For how long?

A A little over twenty-three years.

Q What branch?

A Army.

Q At what rank did you retire?

A As a lieutenant colonel.

Q Did you work after you retired from the service?

A I did.

Q And what did you do?

A I was on the faculty of the University of Maryland.

Q When did you retire from that job?

A In 1972.

Q When did you first hear of Rio Rancho?

A Early in 1968.

Q And from whom did you hear about ti?

A From my wife.

Q Did you go to a dinner party?

A We did.

Q And when was that?

A In April of 1968.

Q And where was the dinner party held?

A At Laurel, Maryland.

Q Did you know that the party was being held to sell land?

A Yes.

Q Did you see a movie at the party?

A We did.

Q Do you recall the title of the movie?

A Well, this is some eight years ago.

No, I don't recall the title.

Q After the movie was over, what happened?

A There was a brief introduction by the man in charge and then we had a discussion with the sales representative who was at our table.

Q And what did you talk about with the sales representation?

A Such matters as what the cost of property was, what size lots were available for sale.

Q Did you indicate an interest in purchasing

A Yes, we did.

Q And what happened then?

A When we indicated a specific interest in property, the sales representative at our table indicated to the man in charge to hold certain properties by number.

Q What did you understand the purpose ofthis hold procedure to be?

A It was my understanding that it was to avoid a conflict of two or more persons trying to purchase the same property.

Q Did you buy land that night?

A Yes, we did.

Q And how much land did you buy?

A Two acres.

Q Why did you buy it?

A Two reasons:

I had in the back of my mind retirement, looking for a place to retire, and, secondly, as a possible investment.

Q Did you understand that you were buying undeveloped land?

A Yes.

Q Did they explain to you the exchange privilege?

A Yes.

Q And were you told about the six month visitation?

A We were.

Q Did there come a time when you visited Rio Rancho?

A We did.

Q When was that?

A About a month later.

Q And how did you get there?

A On a tour, a group tour of people from Maryland.

Q Where did you stay at?

A At the Panorama Inn.

Q Did you see the property that you had purchased at the dinner?

A Yes, yes, we did.

Q What unit was that in?

A That was in Unit 10.

Q What did you think of the property that you purchased?

A Well, frankly, we were absolutely delighted.

Q Why was that?

A Two reasons:

This is the first real property that I had owned and I was proud of it, and, secondly, it was very, very delightfully located.

Q Did you buy any more land on the trip?

A Yes, we did.

Q How much?

A A half acre.

Q Why did you buy the additional half acre?

A We decided very shortly after being in Albuquerque that this offered real possibilities for retirement, that is, we liked the area; that combined with the fact that we were very delighted with the two acres that we had, which we didn't want to see broken up, so we purchased this additional half acre to have something available to trade should we decide to go to Albuquerque to retire.

Q When did you move to Rio Rancho?

A In 1972.

Q And when you first got there, where did you stay?

A At the Secretaries Apartment.

Q Did you rent or did you buy at the Secretaries Apartments?

A We rented.

Q Why did you rent at first when you moved there?

A Well, again, we had decided that wherever we went we had to be sure, before we constructed a house, that this is where we wanted to retire andspend the rest of our lives.

Q How long did you sty at the National Secretaries?

A About two months.

Q Did you buy a house?

A Yes, we did.

Q Did you buy a resale house or did you have one built?

A It was a resale.

Q Why did you buy a resale house rather than have one built?

A Again, two reasons:

First, the resale house that we saw was the model that we were going to build, the lot was very nicely located, not far from the golf course, and it was very well maintained, about a year old, and secondly, my wife had been associated with a small construction firm in Maryland and was aware of the pitfalls and perils of constructing a house.

Q Have you been retired since you moved to

Rio Rancho?

A Yes, I have.

Q Do you belong to any organizations there?

A Yes. I'm a member of the country club, the Mens Golf Association of the club and the Homeowners Civic Association.

Q Do you hold offices in any of these organizations?

A I'm a past president of the Mens Golf Association and I am currently president of the Homeowners Civic Association.

Q How often do you play golf out there?

MS. HYNES: Objection.

THE COURT: Sustained.

Q You say you are now president of the Homeowners Civic Association?

A Yes.

Q What is the Homeowners Civic Association?

A It's an organization of homeowners, homeowners including detached dwellings, condominiums, mobile homes, for the purpose of promoting a healthy and pleasant community.

Q What does it do?

MS. HYNES: Objection.

THE COURT: Overruled.

A It represents the interest of the homeowners with the developer, with the county government, with state government as appropriate, and engages in community activities which to the organization appear to be of benefit for the community.

Q Is AMREP or Rio Rancho Estates a member of the Homeowners Civic Association?

A No, they are not.

Q Do they have any control over the Homeowners Civic Association?

A No, they do not.

Q How does AMREP and the Homeowners Civic Association get along?

A Very good.

MS. HYNES: Objection.

THE COURT: Sustained.

Q You still own two and a half acres of undeveloped land, is that correct?

A Yes.

Q What do you intend to do with it?

A To keep it as a part of my estate.

Q Do you think your land at Rio Rancho Estates is a good investment?

A I do.

Q Do you recall being told anything about Rio Rancho Estates by AMREP or by the sales people at the dinners that was not true?

A No, I do not.

Q Have you been treated fairly by AMREP?

A I believe so.

Q Do you feel that you were cheated or defrauded in any way?

A No, I do not.

MS. CROSS: No further questions.

THE COURT: You may cross examine.

MS. HYNES: Thank you, your Honor.

CROSS EXAMINATION

XXX BY MS. HYNES:

Q Mr. Nash, my name is Patricia Hynes and I represent the government.

You said that you retired from the faculty at the University of Maryland in 1972.

What did you teach at the university?

A I taught political science, but was primarily engaged in research in political science, rather than teaching per se.

Q When you went to -- did you only attend one sales dinner for Rio Rancho?

A No, I attended more than one sales dinner.

Q How many dinners did you attend?

A Two, I believe.

Q The first dinner you attended in 1968?

A Yes.

Q And when did you attend the second?

A I think it was also in 1968.

Q This was after you bought your piece of property at the first dinner?

A That's correct.

Q At the dinners, the two dinners you attended in 1968, did the speaker give a presentation to the audience?

A Yes.

Q And do you recall that in addition to the movie, that there was a chart that the speaker used that showed the relationship and compared an investment in land and an investment in stock, some savings? D o you recall that?

A I recall a chart, but I really don't recal whether that was a part of the speaker's presention or a part of the film.

Q But there was a separate chart?

A There was a chart used by someone. As I say, whether it was in the film or by the speaker -- this is eight years ago-- I'm not sure.

Q I see. You don't recall.

A No.

Q I know you said that the presentation that you listened to was eight years ago.

Do you recall that the speaker said anything about an investment and compared an investment in Rio Rancho land with other types of investment, such as stocks, money in the bank?

A Again, I recall this presentation, but whether it was made by the speaker in the film or the speaker who was conducting the meeting, I can't say.

Q I see.

Do you recall whether the speaker talked about the direction of growth of Albuquerque?

A Again, I find it very difficult to distinguish between the speaker and the film.

I recall conversation about the growth of Albuquerque.

Q And do you recall at the dinner that you attended that statements were made that the only direction that Albuquerque could grow was in the direction of Rio

Rancho?

A Yes.

Q And you testified that you bought two acres of land that evening?

A That's correct.

Q And you had in mind retirement and relocation?

A Yes.

Q And you also had in mind investment?

A Yes.

Q You testified that when you visited the property and saw your two acres, you were very pleased?

A Yes, we were.

Q And pleased with the location of that property?

A Correct.

Q At the time that you bought your two acres in Unit 10, did you understand that the company would eventually extend utilities to those two acres?

A It was my understanding that when development occurred in the area of that property, that there would be utilities, yes.

Q And that the price that you were paying for the land that evening, those two acres in Unit 10, included the cost of extending utilities?

A Certainly a part of it.

Q And then there were certain hookup charges, is that correct?

A Perhaps. This is common in a municipality.

Q You testified that when you went to visit the property, that was about a month after you purchased your two acres?

A Yes.

Q You bought an additional half acre?

A Yes.

Q And this half acre you were going to use to exchange into a building area?

A Yes.

Q And why was it that you didn't want to break up that two acres?

A Again, because of the delightful location. It was on a slope of a hill, overlooks the valley and it just appeared, we, having four sons, that it was better to leave it as a parcel.

Q And how old are your four sons?

A They are all over twenty-one now.

Q In 1968?

A They were in their teens.

Q And you held on to that two acre piece of property for your sons' use?

A As I indicated, as a part of my estate, yes.

Q And in 1968, did you expect that the two acres in Unit 10 would be part of your estate or that your sons would build on it one day?

A No, they would be a part of our estate.

Q And that is your belief today?

A It is.

Q Have you ever made any attempt to resell any of your two and a half acres?

A No, I have not.

Q When you bought your house at Rio Rancho, what unit was it in?

A The house that we purchased is in Corrales Heights.

Q And who did you purchase that house from?

A Mr. and Mrs. George Caste.

Q Did they relocate within Rio Rancho upon selling you that house?

A No, they did not.

Q Where did they relocate?

A Pennsylvania, I believe.

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Q The organization that you belong to at Rio Rancho is called what, the Homeowners Association?

A The Rio Rancho Homeowners Civic Association, Inc.

Q Let me show you Government Exhibit 794 in evidence. I will read from a part of it and then ask you if you are aware of this.

Paragraph 15 at page 8 of Government Exhibit 794 in evidence has the title Lot Owners Association and it says: All common facilities at the present time maintained by the company at its own cost and expense and the company will continue to assume the cost of such maintenance until at least April 30, 1975. It is anticipated that an association will be organized by that time to which lot owners will belong and to which they will pay dues sufficient to maintain such common facilities and pay for any other responsibilities assumed by such association.

Is your association aware that AMREP and Rio Rancho in filings with New York State was making the statement that such an association, a lot owner's association would assume the cost of maintaining common facilities?

A No, I certainly am not aware of that.

THE COURT: Are you assuming that his organization is the organization referred to in there?

MS. HYNES: I am getting to that, your Honor.

THE COURT: Get to it in a hurry because I have gotten lost.

MS. HYNES: I am sorry.

Q You were not aware that that statement was made in filings with New York State?

A No, I was not.

Q Were you aware that the company was relying upon a lot owner's association to be formed to take over the cost of maintaining common facilities at Rio Rancho?

A No, I wasn't.

MR. ARKIN: Objection.

THE COURT: Overruled.

A No, I was not.

Q I take it the purpose of your association is not to take over the responsibilities of the common facilities at Rio Rancho?

A No, it is not.

THE COURT: Is there such an organization in Rio Rancho now?

THE WITNESS: Not to my knowledge, your Honor.

Q Let me read from Government Exhibit 1002 in evidence, which is a property report, dated May 8, 1975, filed with the federal government and it states:

"The developer owns all of the above facilities" referring to community facilities, community center, baseball park, et cetera, youth activities center. "The developer owns all of the above facilities and will maintain such facilities without charge to the lot owners until at least through 1975 and may continue to do so thereafter for a limited period of time on a year to year basis although it is not contractually obligated to do so. Thereafter the developer assumes that a community association will be formed voluntarily by the residents of the subdivision to assume the responsibilities of maintenance which cost about $135,000 per year. At such time or at such time thereafter as the developer may choose, the developer may in its discretion dedicate, convey or sell the recreational facilities to the association. There is no assurance, however, that such an association will be formed. However, if this should happen, membership will not be required for all lot owners but if you wish to use the facilities you may have to pay a disproportionate share of the maintenance cost of the recreational facilities.

Were you aware that that statement was filed in federal property reports?

A No, I was not.

Q Were you aware that the company was not obligated to maintain the recreational facilities that are at Rio Rancho?

THE COURT: After a certain date.

Q On a year to year basis.

THE COURT: After 1975.

MS. HYNES: Yes-

A Would you repeat the question, please?

Q Were you awaer that after 1975 the company was not obligated to maintain the community facilities at Rio Rancho?

A No, I was not aware of that.

Q Were you aware that the company in federal reports was stating that it intended to have a lot owner's association or a community association formed to take over those costs?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q I take it that the association that you belong to is not a community association which was formed to take over the cost of maintaining the facilities at Rio Rancho.

A That is correct, it was not.

MS. HYNES: I have no further questions, your Honor.

THE COURT: Redirect.

MS. CROSS: Do you have the various New York reports. I don't know what is in evidence.

MS. HYNES: I have this one, 794, which is in evidence.

MS. CROSS: What else is in evidence in terms of a New York report?

791 I believe is in.

REDIRECT EXAMINATION

BY MS. CROSS:

Q Mr. Nash, did you know that in the 1969 New York filing the provision under the Homeowners Association read: All common facilities are at present maintained by the company at its own cost and expense and the company will continue to assume the cost of such maintenance until at least April 30, 1971.

Did you know that that had been filed?

A No, I did not.

Q Did you know that in the filing for April 17, 19 -- excuse me, the filing for October 1, 1972, there was a provision that said: All common facilities are at present maintained by the company at its own cost and expense and the company will continue to assume the cost of such maintenance until at least April 30, 1973.

Did you know that that was in a New York report dated October 1, 1972?

A No, I did not.

Q Did you know in a New York report that was dated June 20, 1973, it said: All common facilities are at present maintained by the company at its own cost and expense and the company will continue to assume the cost of such maintenance until at least April 30, 1974.

Did you know that that was in that report?

A No, I did not.

Q Who now pays for the maintenance of the recreation facilities at Rio Rancho?

A To the best of my knowledge the company, AMREP.

Q Has there been a study undertaken by the Homeowners Civic Association as to whether or not to incorporate?

A Yes.

Q Incorporate what?

A Incorporate Rio Rancho as a municipal corporation of the State of New Mexico.

Q In other words, make it like a town?

A That's correct.

Q When was this study conducted on incorporation?

A In fact there were two, one in 1974 and one in 1975 - '76.

Q If incorporated, what would the incorporation take over?

MS. HYNES: Objection.

THE COURT: Overruled.

Q What would be the responsibilities of the incorporated municipality?

A The usual responsibilities of a municipality including police, recreation, zoning, planning, the usual functions of a municipality. Recreation to the extent that they chose to have recreation.

Q Is that something that is now being discussed by residents of Rio Rancho?

A Yes.

Q Has it been put to a vote yet?

A No, it has not.

MS. CROSS: No further questions.

RECROSS EXAMINATION

BY MS. HYNES:

Q What was the recommendation of your association in connection with the two studies on incorporating? Let me take the first one in 1974.

A Well, the '74 study recommended that the study committee be broadened and that the subject be studied additionally a little more in depth.

This was done to include other organizations beside the Homeowners Association in the second study committee.

The second committee recommended that a new group be formed to carry out the necessary steps as required by the laws of New Mexico to bring the question of incorporation to a vote of the people.

Q So the 1975-'76 study, the conclusion was to put it to a vote to the residents and that has not been done?

A That's correct.

Q Is it a fair statement there is a great deal of opposition to that proposal on municipality?

A No, I wouldn't characterize that as a fair statement.

Q What is the position of the residents with respect to creating a municipality and accepting the tax base of maintaining the facilities?

A Opinion is divided.

MS. HYNES: I have no further questions.

THE COURT: You may step down.

(Witness excused)

MR. ARISOHN: The defense calls Ruth Lindermann.

RUTH LINDERMANN, called as a witness by the defendants, being first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

XX BY MR. ARISOHN:

Q Mrs. Lindermann, where do you live?

A 302 Los Marios, Rio Rancho, New Mexico.

Q What section of Rio Rancho is that?

A Corrales Heights.

Q For how long have you lived there?

A Since June of 1975, about a year and a half.

Q Prior to living in Rio Rancho, where did you live?

A Valparaiso, Indiana.

Q For how long did you live there?

A Two years.

Q Prior to that where did you live?

A Fort Wayne, Indiana.

Q For how long did you live in Fort Wayne?

A Twenty-two years.

Q Are you currently employed?

A I am not.

Q What was your prior employment?

A I was secretary with the Fort Wayne Community Schools.

Q Are you married?

A I am.

Q Is your husband now retired?

A Yes, he is.

Q Mrs. Lindermann, when did you first hear of Rio Rancho?

A When my husband was thinking of retiring we knew we wanted to move out of the midwest. We thought we would like the southwest so he wrote to several friends living in the southwest one of which was Pastor Martin Hartenberger of Albuquerque.

Q As a result of your husband's letter to Pastor Hartenberger, did he or you receive correspondence from anyone at Rio Rancho?

A We did.

Q From whom?

A Pastor Martin Schleibe.

Q Who is Martin Schleibe?

A Martin Schleibe is a retired Lutheran clergyman who had moved to Rio Rancho and had been living there for about two years.

Q After you received the correspondence from Pastor Schleibe, did you travel to Rio Rancho?

A We did.

Q When was that?

A Thanksgiving in 1974.

Q Where did you stay?

A We stayed with Pastor Schleibe and his wife.

Q Where is that home?

A In Corrales Heights in Rio Rancho.

Q For how long did you stay with them?

A Six days.

Q During your stay in Rio Rancho over Thanksgiving 1974, did you investigate the Albuquerque area for retirement purposes?

A We did.

Q What did you do?

A Pastor Schleibe made arrangements for us to take a bus tour that was run by AMREP. The bus tour consisted of going through the Albuquerque area.

In addition to that we traveled with Pastor and Mrs. Schleibe in their car around the Albuquerque area.

Q With respect to the bus tour, do you recall who else was on the bus tour?

A There were other people on the bus tour from out of state.

Q Do you recall whether there was a salesman on the bus?

A There was no salesman on the bus.

Q You testified that you traveled around Albuquerque with Mr. and Mrs. Schleibe in their car.

Do you recall where you went?

A We went over to the tramway, I know, on the east side of the valley. We went down to Old Town. We were out at Kirtland Air Force Base and just generally drove around.

Q During that six day period in 1974, did you decide upon retiring in the Albuquerque area?

A Yes, we did.

Q Where did you decide to retire?

A We decided to retire in Corrales Heights in Rio Rancho.

Q Did you make that decision before or after you traveled around in Albuquerque?

A After.

Q Will you tell his Honor and the jury where you decided to settle in Rio Rancho?

A Yes, I would be glad to.

We liked the area. We liked the reports that we got about the weather, which is one of the main reasons we went down there, the climate and Rio Rancho itself is such a beautiful location. We just fell in love with the area.

Q Did there come a time during that six day period, Mrs. Lindermann, when you agreed to purchase land at Rio Rancho?

A There was.

Q Do you recall what day that was?

A Very well, it was Thanksgiving afternoon.

Q From whom did you agree to purchase the land?

A We agreed to purchase the land from Pastor and Mrs. Schleibe.

Q Do you know where the land was located?

A Yes it was in Unit 3.

Q How much land did you agree to buy?

A We agreed to buy a half acre.

Q Do you know whether that land was developed or undeveloped?

A We knew that it was undeveloped.

Q Do you recall the terms you agreed with Pastor Schleibe upon purchasing that land?

A Yes. It was a private arrangement made between the Schleibes and ourselves. We agreed the purchase price would be $2250, $100 down and $50 a month.

(Defendant Howard Friedman and Henry Hoffman Exhibit KB marked for identification)

Q Mrs. Lindermann, did there come a time when you, your husband and the Schleibes entered into a written contract?

A There was.

Q Let me show you Defendants Exhibit KB for identification and ask ifyou can identify that?

A This is the agreement that we all four signed.

Q May I show you the reverse side of this agreement and ask you if you can identify that?

A Yes, these are the record of payments that have been made.

MR. ARISOHN: We offer KB.

VOIR DIRE EXAMINATION

X

BY MS. HYNES:

Q This agreement is dated in January of 1975. Did you say you purchased the property in Thanksgiving of '74?

A In '74, I am sorry. We agreed verbally on Thanksgiving of '74 to purchase the property.

Q Actually entered into the agreement in January of '75?

A Yes.

MS. HYNES: We have no objection.

(Defendants Exhibit KB received in evidence)

XX

MR. ARISOHN: May I read one paragraph from this, your Honor?

THE COURT: Yes.

(Mr. Arisohn read from Defendant Exhibit KB in evidence to the jury)

XX

BY MR. ARISOHN:

Q Mrs. Lindermann, did you receive a deed from Pastor and Mrs. Schleibe?

A Yes, we did.

(Defendants Howard Friedman and Henry Hoffman Exhibit KC marked for identification)

XXXX

BY MR. ARISOHN:

Q Showing you Defendants Exhibit KC for identification, can you identify that?

A Yes.

Q What is it?

A That is the deed that we got from the Schleibes.

MR. ARISOHN: We offer KC.

VOIR DIRE EXAMINATION

BY MS. HYNES:

Q Mrs. Lindermann, this deed is filed in December 12th of 1974.

A Yes.

Q You didn't purchase the land unitl '75?

A As I say, we had a verbal agreement with them before that.

Q The land was actually transferred to you in the beginning of December of '74?

A I am sorry, I don't remember.

Q Let me show you this date here.

A Yes.

Q Does that refresh your recollection that the land was conveyed to you prior to the January agreement?

A No, I am sorry, I really don't know what the procedure was.

Q Have you seen this deed?

A I have glanced at it.

MS. HYNES: We have no objection.

(Defendants Exhibit KC received in evidence)

XXX

Q Mrs. Lindermann, do you know from whom Pastor and Mrs. Schleibe bought the land they sold to you?

A Yes.

Q From whom did they buy it?

A AMREP.

Q You testified you bought that half acre -- by the way, how large was that piece of land?

A It was a half acre.

Q You testified you bought that half acre from Pastor and Mrs. Schleibe for $2250. Did you know at that time whether Pastor and Mrs. Schleibe were making a profit on that sale?

A Yes, we did.

MS. HYNES: Objection.

THE COURT: She knew whether or not they were.

Q Did you know or did you later learn how much Pastor and Mrs. Schleibe paid for the land they sold yo

A Yes.

MS. HYNES: Your Honor, I would object on hearsay grounds.

THE COURT: Overruled.

Q How much?

A They paid $1395 for the property.

MS. HYNES: May we fix a time, your Honor?

THE COURT: Do you know when they bought the property?

THE WITNESS: No, I really cannot make a guess either, no.

Q Do you know whether or not Pastor and Mrs. Schleibe owned additional land at Rio Rancho?

A They did.

Q Do you know whether they have sold additional land at a profit?

A Yes, they have.

Q During the trip that you made during Thanksgiving week of 1974, did you also arrange to exchange the lot you bought from the Schleibes into the developed area at Rio Rancho?

A Yes, we did.

Q How did that occur?

A We had decided that we wanted to settle in Corrales Heights so on Friday morning, we had already picked up a kit of material from AMREP that depicted various houses that could be built, suggestions, floor plans and so forth. We had picked out the house that we thought we wanted and so we called AMREP to ask to see a salesman because we wanted to look at property on Friday morning.

Shall I go on?

Q Yes, please.

A We did have the appointment and the salesman did take us around and show us various pieces of property after looking at the house that we had decided that we wanted and he showed us a couple of pieces of property and then he came to one piece of property that he said our house would do very well on. My husband and I are kind of novices at this whole thing. We had never owned property before and when you do this, well, as I say, we were rather novices at it.

He said that this piece of property would probably work out very well with the house plan that we had. However, the piece of property also had an option on it. Some people from out of state had an option on this piece of property.

He said that they had not made any move to build on it and he thought that possibly they were not interested in picking up the option so he said that he would contact them and find out if they were interested in going ahead or if they would release the property and would call us. We were due back in Valparaiso, I think we left on Saturday again, so he did call us on either Monday or Tuesday of the following week and said we could have the piece of property. So we said, fine, let's go ahead.

Q When you went driving around looking for the property with the salesman, you testified that the salesman said that this particular lot in Corrales Heights--there was something special about it.

A Pursuant or rather because of the house plan that we had chosen, the house plan we had chosen has a living room at the back of it. In the living room there are two picture windows plus a patio door, a glass wall more or less.

We found out after we got down there and the house was built that this afforded us a beautiful vista of Albuquerque to the south and the Sandia Mountains to the east of us. It is a beautiful location.

Q Did you work out with the salesman what the cost of the house and lot in Corrales Height was going to be?

A Yes, we did.

Q What was that?

A About $35,000.

Q Did you also work out with the salesman the exchange of your lot you had purchased from the Schleibes?

A Yes, we did.

Q Was that exchanged lot going to be used towards the purchase of the house and lot in Corrales Heights?

A That is the reason we bought the lot, yes.

Q Did you receive a credit from AMREP Corporation?

A We did.

Q How much credit?

A $3150.

Q Was that $3150 applied toward the purchase of your house and lot in Corrales Heights?

A Yes, it was.

Q Did you receive that $3150 by turning back into AMREP Corporation the lot you had purchased from the Schleibes?

A Yes, we did.

xxx (Defendant Howard Friedman and Henry

Hoffman Exhibit KD marked for identification)

Q Let me show you KD for identification and ask if you can identify it.

A Yes, this is the deed that we signed over to AMREP.

MR. ARISOHN: We offer it.

MS. HYNES: We have no objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit KD received in evidence)

Q Aside from the credit that you got by exchanging the lot into AMREP towards the purchase price of your house and lot in Corrales Height, did AMREP give you any additional credits?

A Yes, they did. They paid for two airplane trips down to Rio Rancho.

Q And was that a deduction from the purchase price of your house and lot package?

A Yes, it was.

Q Was your house built in Corrales Heights?

A Yes, it was.

Q Who built the house for you?

A AMREP.

Q And when was it finished?

A In May of 1975.

Q By the way, do you know whether or not the builders aside from AMREP build at Rio Rancho?

A Yes, I have definite knowledge of that. There were some built right behind us.

Q Since June of 1975, when you moved to Rio Rancho, have you seen growth and building at Rio Rancho?

A When we moved to Rio Rancho there was nothing between us adn the valley.

Since we have been there, we have watched houses go up -- there must be 75 or 100 houses right in our own area.

Q And that's all since June of 1975?

A Yes.

Q How do you like living at Rio Rancho?

A I could become a salesman.

MR. ARISOHN: I have no further questions.

CROSS EXAMINATION

BY MS. HYNES:

Q Mrs. Lindermann, my name is Patricia Hynes. I represent the government.

You just bought one half acre?

A That is correct.

Q You bought that from Pastor Schleibe?

A Right.

Q Do you know how much land Pastor Schleibe owned besides that half acre that he sold you?

A I don't really know, no. A couple of acres, I think, but I couldn't testify to it, what exactly he owned.

Q And you did testify, however, that -- withdrawn.

Did Pastor Schleibe sell some of his property to other people, such as yourself, who was interested in moving to Rio Rancho?

A Yes. He told us he did, yes.

Q And the other people that he sold property to, in fact, moved to Rio Rancho?

A I do not know.

Q You never attended a sales dinner?

A No.

Q And your only contact with Rio Rancho prior to building your house was actually through Pastor Schleibe?

A That's right.

Q And you stayed with him?

A Yes.

Q Have you bought any additional land at Rio Rancho?

A No, we have not.

MS. PYNES: I have no further questions.

THE COURT: Redirect.

MR. ARKIN: If your Honor please, we had planned five witnesses for today.

MR. ARISOHN: No redirect, your Honor.

THE COURT: You are excused.

(Witness excused)

MR. ARKIN: No redirect. That is the first thing.

We have witnesses for tomorrow.

THE COURT: No more?

MR. ARKIN: No. We had planned five for today, your Honor, and things just went--

THE COURT: It is only twenty after three. The jury is hungry for witnesses.

MR. ARKIN: I apologize.

THE COURT: 10:15 tomorrow morning, ladies and gentlemen.

(Jury left the courtroom)

THE COURT: Are we going to get hung up this way tomorrow and the rest of the time?

I can't do this, Mr. Arkin.

MR. ARKIN: Your Honor, we thought --

THE COURT: I have twelve cases that have been sitting around for three months for trial.

MR. ARKIN: Your Honor, I have no interest in prolonging this, either. I am sure you know that. And we thought five witnesses today would be adequate.

You know, based on our track record in this trial, probably five witnesses is a new record.

THE COURT: It is a new record, it is true, but this is direct, not cross.

Your track record has been made on cross gtjw

examination, Mr. Arkin, not on dire[illegible]

MR. ARKIN: Well, I don't know.

THE COURT: Let us not have it happen again. It happened yesterday, it happened today. All right, see you tomorrow morning.

MR. ARKIN: Your Honor, I will say in that connection that as we were bringing in Mr. Godfrey over the weekend and your Honor said that Mr. Godfrey could not go on until next Thursday --

THE COURT: Or if the government has his papers sooner so that they can look at it.

MS. HYNES: We have the same situation with Mr. Flatow and with any of the people that Mr. Arkin is calling where we need records.

MR. ARKIN: Ms. Hynes, let me finish what I wanted to say.

In the event that the government is not ready to take Mr. Godfrey until next Thursday, that is, a week from today, in view of what your Honor said to me, I should tell your Honor because of the order of witnesses we have that there may well be a Lacunae or a gap next week.

THE COURT: Well, you better make sure there is not, that's all.

I can't sit around here. I have other trials begging for trial, they want to go, and I can't have cases stopped.

MR. ARKIN: I understand, your Honor.

THE COURT: Morning, afternoon, gaps.

No gaps, Mr. Arkin. Get other witnesses in. It is now Thursday. You have plenty of time to get witnesses in to fill up every day next week.

(Adjournment taken to January 7, 1977, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Re[illegible]end E. Scott Byers	6577	6592	6599	
Marion Quinn	6601	6619	6629	
Grete Vives	6632	6652	6678	
Grover E. Nash	6683	6692	6702	6704
Ruth Lindermann	6706	6721		

EXHIBIT INDEX

Defendant Chester Carity and Daniel Friedman	Identification	In Evidence
JZ	6600	
KA	6603	
Defendant Howard Friedman and Henry Hoffman		
KB	6711	6712
KC	6712	6714
KD	6719	6719
Government		
2008	6666	
2009	6669	6669

UNITED STATES OF AMERICA

v.   76 Cr. 644

AMREP CORPORATION, et al

January 7, 1977
10:15 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

MR. ARKIN: Your Honor, in view of our discussion yesterday, I feel that I should like to tell you about the state of the defense.

It is as follows: As you know, we went out to Albuquerque a couple of weeks ago with the expectation, the intention of trimming our defense to meet what we thought the prosecution case to be. We have done that.

We also set up a certain number of witnesses for this week, which up until yesterday seemed to work out just about correctly. We went a little bit short yesterday.

THE COURT: And the day before.

MR. ARKIN: And I wanted to tell your Honor now what it is we have planned because I think your Honor should know that in view of what you said to me yesterday.

Today we have three witnesses. We have Mr.

Graham for a couple of minutes. We have Mr. Yguado whom is an expert whom we expect to take a substantial period of time and we have Miss Mellenbrook who is a customer who will testify much as the other people did yesterday.

Aside from that we have the following:

Then we are going to rest with one possible exception which I will explain to your Honor.

We have Mr. Godfrey, who is an expert appraiser, who is coming in from Albuquerque this weekend and to facilitate the prosecution preparing for its cross examination, we are willing to provide a room at the Proskauer, Rose firm for a representative of the prosecution to review the documents at the same time we do this weekend, all weekend. The documents will be in today.

We have Mr. Flatow. Mr. Flatow will not be a very lengthy witness nor do I think that Mr. Godfrey will for that matter. He is coming in Sunday. I believe the prosecution has all or almost all of the documents which would be relevant to his testimony.

Then we may have one or two --

THE COURT: Who is Mr. Flatow?

MR. ARKIN: Mr. Flatow is a man who did planning work for the company, your Honor, and is an urban planner and architect in the Albuquerque area. He will not be a lengthy witness. He will be a rather short witness as I understand it.

Aside from those two, we have potentially a computer person, somebody who will come in and put some statistical facts in evidence and that will go extremely briefly and with Mr. Sprizzo doing it might be three minutes or five minutes.

THE COURT: That is because he talks fast, not because the content is short.

MR. ARKIN: It will be very, very brief, your Honor. It is just certain statistics which we have had prepared.

Then it is possible that we will have a few more customers but I should say to your Honor that I do not believe it will be likely. We have some in the wings, so to speak, but in my view I just don't feel it is necessary for us and I don't think I am going to put them on.

The only question remaining then would be whether we put the defendants on and Mr. Fleming and my group and Mr. Sprizzo have not finally resolved that decision so that we could with the witnesses we have today and Godfrey and Flatow and a little bit of the computer stuff rest very early next week with the exception of the defendants whom we have not made a decision on finally.

The reason I tell you that is I was very sensitive to what your Honor said yesterday about wasting the Court's time or anybody else's. I don't want to do that.

As your Honor knows we have had a variety of logistical problems, anybody would with this kind of case. We tried to put it together so we would waste nobody's time. This is what we have left.

I would like to put the defendants on, if at all or any of them, as the last witnesses in our case so I would like to have Godfrey and Flatow on beforehand.

Now, if the prosecution can get ready over the weekend with respect to Godfrey, I would expect that we would be able to rest aside from the defendants by Tuesday or Wednesday at the latest.

THE COURT: My problem is this, Mr. Arkin:

In the first place, you went out to Albuquerque just a week ago, not several weeks ago.

MR. ARBIN: Excuse me, it was a week ago, yes.

THE COURT: I was ready to proceed with the defense on Wednesday, December 28th and continue on Thursday. We lost two working days last week.

We lost them because you said that if you went out to Albuquerque with Mr. Sprizzo and Mr. Arisohn and Mr. Fleming you could possibly shorten the trial. It is all right with me so I gave up two trial days for that purpose.

Then youcome back and on Monday we have a full day. Tuesday you finish at 3:40, no more witnesses.

Yesterday you finished at 3:20, no more witnesses. That is not shortening a trial for me. I am back where I started from. I might as well have sat last Wednesday and Thursday and filled in witnesses then. I would be as well off now if I had done that as I am today. I gained nothing.

I am faced with the problem, I have been trying to do this and get this case to the jury by the week of the 24th simply because I am chairman of the Magistrate's Committee and the United States Judicial Conference which has had a meeting scheduled since last July on January 31st and February 1st.

I don't want to have to go through another two day recess to come back to this case again. It is unfair to the jury. We are spending $400 a day for jurors here. You can't come in and try a case and have no witnesses at 3:40 in the afternoon when we sit until 5:00

o'clock and very next day right after quit at 3:20. So I am telling you I don't know how you arrange it, next week every day we will sit until 5:00 o'clock. If you have to take witnesses out of turn, that is just too bad. I warned you about that yesterday, Thursday, I am giving you four and five days notice of your problem, not suddenly being thrown at you.

MR. ARKIN: I understand that, your Honor. What we have left are essentially two witnesses whom I have mentioned to your Honor and Ms. Hynes before.

THE COURT: You have possibly four individual defendants.

MR. ARKIN: Yes, your Honor.

THE COURT: That will take a long time, Mr. Arkin. I am not saying they should not testify. I don't care whether they testify or not. All I am saying to you, I intend and I expect you to fill up my time next week every day until 5:00 o'clock.

MR. ARKIN: May I ask this, your Honor --

THE COURT: If you have to decide this weekend whether you are going to but the defendants on, decide this weekend.

MR. ARKIN: Your Honor, I will decide that this weekend.

THE COURT: If you need to put them on next week to fill in time, put them on.

MR. ARKIN: Your Honor, I will decide --

THE COURT: This is your problem, but I warned you about it yesterday, Thursday, after two days of your failing to follow the Court's schedule.

MR. ARKIN: Let me broach a problem to your Honor which is this:

If we decide or I decide not to put the defendants on the stand, this is a hypothetical situation, and what I have left are two people, Flatow and Godfrey, your Honor said Godfrey could not go on the stand until next Thursday.

THE COURT: That was the outside date. I didn't say he couldn't go on until next Thursday. I said the outside date was next Thursday to give the government time to go over their papers, but I also told the government that they couldn't just do this in the evenings at their convenience. I expected, since there are four assistants here, that one could get to work on the papers tomorrow and it shouldn't take them until next Wednesday to go over the papers that Mr. Godfrey is going to use.

Actually I expect Godfrey to be ready to be put on the stand long before Thursday.

MR. ARKIN: Fine. We are going to make the papers and a room available at Proskauer, Rose to representatives of the prosecution Saturday. We will make it available Sunday. We will make it available Monday if that is required.

THE COURT: Who are you putting on on Monday?

MR. ARKIN: I will put on hopefully, if they are ready, Mr. Flatou and Mr. Godfrey.

THE COURT: All right, if Mr. Godfrey is not ready who are you putting on?

MR. ARKIN: He will be ready from our point of view. From out point of view he will be ready and Mr. Flatou will be ready from our point of view.

THE COURT: The only trouble is you keep saying from your point of view but you are not producing the documents that the government is entitled to have until tomorrow.

MR. ARKIN: First of all, the Flatou documents, your Honor --

THE COURT: I am talking about Godfrey.

MR. ARKIN: We don't have them. They are coming in by air. Most of the documents in these foot lockers, I will say to your Honor, aren't worth a diddley in terms of preparing anybody. They can have every one of them and we will make every one of them available. The man is essentially not going to be relying on not all that much platter. If they have two days and two nights I am sure that they can be ready to cross examine the man by the time he gets off the stand sometime on Monday if that's when we put him on if your Honor will allow us to do it.

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My tender is that's what it is. Our case to my mind will be over the next week. The other potential witnesses are very brief ones if at all. I said to your Honor that I don't expect --

THE COURT: You will be over next week unless you put the defendants on.

MR. ARKIN: Okay, unless I put the defendants on. I don't know how long they will take.

Your Honor, I don't think anybody knows how long they will take. It depends on --

THE COURT: I repeat to you: be prepared to have witnesses on the stand until 5:00 every day. I told you that yesterday, Thursday.

You have plenty of time to work out your schedule to do that. If Godfrey isn't available until Tuesday, you are going to have somebody Monday afternoon if you finish up. If he is not available until Wednesday, you are going to have somebody in there Tuesday, but fill it up. That's all I can tell you. That's your obligation as an attorney in this court with all the advance notice I am giving you.

In order to do that, if you have to decide what you are going to do with the defendants, you had better spend this weekend thinking about it.

MR. ARKIN: Let's assume that I decide not to put them or any of them on the stand and I notify your Honor first thing Monday morning of that. What I have left is Godfrey and Flatou, that's my problem, your Honor.

THE COURT: If that's all you have left, we will deal with that when we come to it. Obviously the government will go to Mr. Proskauer's firm Saturday and sit there Saturday and Sunday going through these papers so we don't have to wait for them to prepare for Godfrey.

MR. ARKIN: That's the point.

THE COURT: They will be there I am sure.

MR. ARKIN: I will be around surely.

THE COURT: I said they will be there I am sure.

MR. ARKIN: I will be there, too.

MS. HYNES: Your Honor, let me raise one other point on the computer person. Are these company records? I am unaware of computer -- these statistics being produced for discovery -- have they been produced and if it is company records or if it is an outside person, again, in the form of an expert doing an analysis --

MR. ARKIN: I will tell your Honor and Ms. Hynes what we may have in mind, which is without telling you the content, they would be computer runs somewhat similar to the ones which Ms. Hynes requested to do during this very lengthy grand jury investigation which the company

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did. Certain runs are being run out by a computer analysis or expert whatever they call him that works for the company. He is a technician. He has nothing to do with other than the computers.

THE COURT: She wants to know what type of underlying documents which the computer technician answer uses.

MR. ARKIN: It's in the computer, your Honor.

THE COURT: Mr. Arkin, a computer technician has to put things into that computer or somebody has to put things into that computer for the technician and to run out a survey or whatever you have asked him to do. Ms. Hynes question is what did you put into that computer.

Obviously she cannot cross examine a document unless she knows what it was used to make it up.

MR. ARKIN: The same types of schedules she has had. The number of customers we have. The number of lots we have. The number of years we have been in business. The number of contracts outstanding. All of the things, there is nothing esoteric about it, they are all things which Ms. Hynes has had for two and a half years. There is nothing unusual which we are putting into any computer analysis, your Honor. Indeed, if anything, I think Ms. Hynes is more familiar with the computer operations of AMREP than I am.

THE COURT: Maybe you had better tell her what was put into that computer which is being used to spew out the tables you are going to use so she knows whether she is familiar with that material or not.

MR. ARKIN: I will advise once we have a definitive run-down of what is happening, once I have that, I will advise Ms. Hynes precisely what it is the computer runouts or printouts or whatever they call those things is comprised of, consists of. I will also advise Ms. Hynes what documents or what data within the computer it is based upon.

At the present time, at this very moment because I did not put together the programs, the computer programs --

THE COURT: You are not in a position to answer the question.

MR. ARKIN: But I will answer it promptly if I decide to put it on. I wanted to alert your Honor to even a five-minute witness, Mr. Sprizzo's five-minute witness, that is what I wanted to do and I have done that.

MS. HYNES: Your Honor, there are two other things in connection with computer programming. One, if you have a computer program, you usually have a narrative summary of what you are putting into the computer. There is something written out which will tell you --

THE COURT: Mr. Arkin has told you he doesn't know. When he finds out he will let you know. That's time enough to raise an objection. He doesn't know so what's the point of arguing with me when he is not in a position to answer you.

MS. HYNES: I am simply stating for the record --

THE COURT: You don't have to keep making a record, Ms. Hynes. You make records of things that are really unnecessary. Stop it, I am not listening to any more.

Mr. Arkin will let you know. When you find out what he has, then you can stand up there and make your record.

I am not in a position to have any intelligent thoughts to bear on what is being talked about because Mr. Arkin doesn't know what he is talking about and has said so.

All right. Bring the jury in.

MR. KAUFMAN: George Marcou is listed as an expert and we were given a list of documents that Mr. Marcou is going to rely on and we were going to go over with Ms. Thompson the documents we still needed to be provided. Mr. Arkin has not mentioned Mr. Marcou or a reAresentative of his firm as a potential witness and I am just inquiring as to whether or not we still need those documents in order to prepare for Mr. Marcou.

THE COURT: Mr. Arkin.

MR. ARKIN: If your Honor please, I pride myself on having any omissions I made intentional.

THE COURT: He says he has listed all his witnesses.

MR. KAUFMAN: Fine.

THE COURT: Bring in the jury.

(Jury present.)

THE COURT: You may proceed.

MR. ARKIN: Mr. Jack Graham. He is out in the hallway, your Honor.

(Continued on next page.)

XXXX

HUGH J. GRAHAM, recalled as a witness, having previously been duly sworn, testified further as follows:

XXX

REDIRECT EXAMINATION

BY MR. ARKIN:

Q Mr. Graham, on Tuesday last, which was January 4, 1977, do you recall being asked by Mr. Kaufman the following question and then giving the following answer:

This is from page 6381 of the transcript of that date, at the bottom of that page of it:

"Q Let me read to you from 314. This is in 1972. 'Today it is physically and geographically impossible for the growth of this city," referring to Albuquerque, "not to first come through Rio Rancho Estates.

"Is that an accurate statement?

"A No, I wouldn't say that is an accurate statement if it says 'first.'"

Do you recall being asked that question and giving that answer, sir?

A Yes, sir.

Q Let me read to you from the same exhibit, 314. I am going to read to you the complete sentence from which the quote was taken together with the sentence immediately preceding it and ask you the same question asked by Mr.

Kaufman. This is quoting from the top of page 9, Exhibit 314. It is the sixth line down from the top.

"So, as a result of this straddling of the city on these three sides, the growth can go in just one direction - one direction only, and that happens to be to the westerly and the northwesterly side in the city of Albuquerque in the very path where Rio Rancho Estates is located. As a matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us."

Is that an accurate statement?

A Yes.

Q Thank you very much, Mr. Graham.

THE COURT: Don't you want to do the cross examination?

MR. ARKIN: Excuse me?

THE COURT: I will see you at the side bar.

(At the side bar.)

THE COURT: That same quotation was read by Mr. Kaufman in conjunction with the cross examination of this witness as a character witness regarding Mr. Friedman, and as a reuslt of what Mr. Kaufman said Mr. Graham said that he would no longer have the same opinion of somebody who made such a statement.

Don't you wish to do the same thing in conjunction with that?

MR. ARKIN: I don't believe it is necessary, your Honor. I think I made the point.

THE COURT: It's your business, not mine.

MR. ARKIN: Thank you very much, your Honor.

(In open court.)

THE COURT: Mr. Kaufman?

MR. KAUFMAN: One moment, your Honor.

(Pause.)

THE COURT: Mr. Kaufman, I want to tell you you are limited to just those two sentences.

MR. KAUFMAN: I understand,your Honor.

(Pause.)

MR. KAUFMAN: No questions, your Honor.

THE COURT: You may step down, Mr. Graham.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Next witness.

MR. ARISOHN: The defense calls Ruth Mellenbrook

XXX RUTH V. MELLENBROOK, called as a witness by the defendants, having first been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. ARISOHN:

Q Mrs. Mellenbrook, where do you live?

A I live at 1302 Bertha Road, Rio Rancho Estates, New Mexico.

Q For how long have you lived there?

A My husband moved in September of 1968 and I followed in January of 1969.

Q In what section of Rio Rancho do you live?

A We are in Section 16, now known as Clearview Heights.

Q Can you tell the jury and his Honor how Section 16 has gotten the name Clearview Heights, if you know?

A Yes.

We have a monthly newspaper and they ran a contest for the three developed areas which had formally been known as 16, 11 and -- well, that was Corrales Heights -- and the winner named 16 Clearview Heights and 11 is Starview Heights.

Q Prior to living in Rio Rancho, Mrs. Mellenbrook, where did you live?

A Cleveland and in and thereabouts.

Q For how long did you live in the Cleveland area?

A I lived in Cleveland and the suburbs all my life.

Q Are you married?

A Yes, I am.

Q Do you have any children?

A I have one daughter, 38.

Q Are you currently employed?

A No. I'm a retired secretary.

Q For whom were you a secretary?

A I was secretary to the chief of the Space Nuclear Propulsion Office, which is a NASA-AEC combined office, ou of Lewistown Center out of Cleveland.

Q Is your husband employed?

A No. He is a retired optometrist.

Q Mrs. Mellenbrook, when did you first hear of Rio Rancho?

A In November of '64 we were contacted by a broker out of Acres and Homes in Cleveland.

Q Did the salesman come to your house from Acres and Homes?

A Yes. We invited him to our home.

Q Did he give you a sales presentation at your home?

A Well, we had an informal talk, if you wish to call that a presentation.

Q Do you recall what he said to you about Rio Ran

A Yes. He said Rio Rancho was a new community out of Albuquerque and eventually it would turn into a very thriving community.

Q Did he tell you they were building a community at Rio Rancho?

A Yes.

Q Did he say anything about the growth of Albuquerque?

A Yes. He said that Albuquerque had certain limitations, it could only grow so far and then it would have to grow into the northeast -- northwest section where Rio Rancho was located.

Q What did you understand from the salesman's statement to you about the growth of Albuquerque regarding the future direction in which Albuquerque would grow?

A Well, as I said, there were limitations as to the direction in which Albuquerque could grow, and eventually it would grow to the northwest.

Q Did you believe at the time you heard the salesman speaking to you that at that time the only way Albuquerque could grow then was to the northwest?

MS. HYNES: Objection to the leading, your Honor.

A No.

THE COURT: Overruled.

A We knew Albuquerque could still grow in other directions, but eventually it would grow to the northwest.

Q Did you understand that there was room to grow in other directions before it would grow to the northwest?

A Yes.

Q Did you buy any land that night, Mrs. Mellenbrook?

A Yes. We bought a half an acre of residential property.

Q Did you sign a contract?

A Yes, we did.

Q Before signing the contract, did you read it?

A We certainly did.

Q You stated you bought land.

How much land did you buy?

A A half an acre.

Q And do you recall what unit that was in?

A Yes. That was in unit 6.

Q Did you know whether that half an acre was developed or undeveloped land?

A No. We knew it. He explained that it was undeveloped.

Q WHAT did you understand by undeveloped?

A No utilities.

Q What about building?

A No building, no utilities, nothing, strictly undeveloped.

Q What was your purpose in buying the half acre?

A At that time strictly investment.

Q Did you hope to realize a profit on that investment?

A If we sold it, we hoped to sometime in the future.

Q Did the salesman indicate to you over what period of time you would realize a profit?

A No, no dates.

Q Referring your attention to the contract, do you recall whether you had a cancellation privilege?

A Yes, I definitely remember, because it was handwritten. We had 30 days in which to cancel outright.

We had six months in which to go out and see the property, if we didn't like it, get our full refund back.

Q Did you know whether or not you had an exchange privilege?

A Yes. We had an exchange privilege, if we would decide to build that they would exchange our half acre in an undeveloped area into the developed area where utilities were already in.

Q Did you have a five-year exchange privilege?

A The five year was a period in which we could trade our half acre in a far-out location in closer, not into the building area, but in closer at an additional charge.

Q Calling your attention to the exchange you testified a moment ago, that is, the exchange into a building area, what was your understanding as to the type of building site you would be given if you decided to take advantage of the building exchange?

A We would have a choice of a half acre, as we had, in a location of our choice in the residential area at no increase in price.

Q And what was your understanding as to the type of road you were entitled to outside your half acre in the building area had you decided to exchange into the building area?

A The contract specifically stated that all roads were built to Sandoval County specifications, which at that time were just dire roads, no paving.

Q What was your understanding as to the type and location of utilities you would have in the building area had you decided to take advantage of the exchange into the building area?

A They were just overhead, no underground; just overhead utilities.

Q And what was your understanding with respect to the type of waste treatment you would have on the building site had you decided to take advantage of the exchange into the building area?

A We knew there would be septic tanks.

Q You testified you met this salesman from Acres and Homes in November of 1964.

Following that time, Mrs. Mellenbrook, did you ever recommend Rio Rancho to any of your friends?

A Yes. Two couples that we were very close to, we invited -- we told them we would like to have the salesman and invited them to listen to a talk, too.

Q Do you recall the names of those two couples?

A Yes. Mr. and Mrs. Fred Rider and Mr. and Mrs. Albert Gruetter.

Q Did there come a time, Mrs. Mellenbrook, when you and your husband and these two other couples attended another sales presentation or informal talk?

A Yes. We had a little informal get-together at Mrs. Rider's house one evening.

Q Did you hear another sales presentation?

A We had an informal talk; nothing formal about it.

Q It was about Rio Rancho?

A Yes.

Q And do you recall when this was?

A This was in December of '64.

Q And where did this take place?

A At Mrs. Rider's house.

MS. HYNES: Can we have the date again? I didn't hear it. I'm sorry.

THE COURT: December, 1964.

THE WITNESS: December, 1964.

MS. HYNES: Thank you.

Q Did any of your friends buy land at Rio Rancho at that sales presentation?

A Yes. Mr. and Mrs. Rider bought a half acre of residential property.

Q Do you know in which unit they bought land?

A Yes. They were out in 6, also.

Q Did you buy any additional land at that presentation?

A Yes. He had approached us about an oversized acre he thought we might be interested in, so we traded our half acre for the acre, of course, at an additional charge.

Q And was that oversized acre in unit 6, also?

A Yes.

(Continued on next page.)

Q What was the purpose for your buying the oversized acre?

A We just thought we would like a little more land.

Q Was that also as an investment?

A Yes.

Q Did you hope to realize a profit on that investment?

A If we sold it in the future, yes, naturally.

Q Did the salesman represent to you over what period of time youwould be able to realize a profit?

A No. It was in the future.

Q By the way, with respect to this sale in December 1964 and the sale the previous month in November, did you feel that you were high pressured into buying land?

A In no way.

Q Did your friends feel that they were high pressured into buying land?

A No.

Q Did your friends ever complain to you about buying land?

MS. HYNES: Objection, your Honor, to the the hearsay form of that question, what the friends said to this witness.

THE COURT: Sustained.

Q Did your friends ever complain to you, Mrs. Mellenbrook, about your recommendation to them about buying land?

A In no way. In no way.

Q Following December 1964, Mrs. Mellenbrook, did you ever visit Rio Rancho?

A Yes. In the summer of 1965, at a suggestion by a business associate in Los Almos to whom I talked a couple of times a week, he suggested we better come down and look, see our property.

MS. HYNES: Your Honor, can we just have this witness tell us what she did and not what other people told her?

THE COURT: Yes.

A We visited the property on vacation in 1965.

Q Did you go on a company tour?

A Yes, we did.

No, I'm sorry.

Rio Rancho arranged for a motel room for us. The next day they picked us up, took us out in a car to see the property.

Q Where did you stay, ma'am?

A We stayed at the Desert Sands or Desert Inn, I'm not sure which, in Albuquerque.

Q Was the Panorama Inn built at Rio Rancho at that time?

A No, no.

Q Did you see your property on that tour?

A Yes, we did.

Q And when you saw your property in Unit 6, did you see what you had expected to see?

A We certainly did. There was nothing to see. There were maybe twelve houses in the developed area and a recreation building, but beyond that there was nothing.

Q I am talking about your particular property in Unit 6.

A There was nothing out there but a beautiful view.

Q Did you see what you expected to see?

A Yes.

Q Were you satisfied with it?

A Yes.

Q On that trip to Rio Rancho in the summer of 1965, did you buy any additional land at that time?

A No.

Q Can you tell the jury what your next contact with Rio Rancho was?

A I believe it was in January of 1966, we approached Rio Rancho --

Q Excuse me. Let me draw your attention to October of 1965.

A Oh, I'm sorry, I forgot that.

In October of 1965 we went to one of the first dinners, invitational dinners that Rio Rancho was giving, and at that dinner Mrs. Rider and myself decided we would like to invest in a piece of commercial property.

Q Before we get to that, will you tell the jury with whom you went to the dinner?

A Oh. Mr. and Mrs. Rider and Mr. and Mrs. Gruetter.

And Mrs. Rider and myself -- our husbands were not involved -- we just thought we would like to have a piece of commercial property, so we bought one piece which was considered two, fifty foot lots, 100 feet by 350, and we bought it jointly.

Q At that dinner, I take it you ate dinner?

A Yes.

Q And did you hear a speaker make a presentation?

A Yes.

Q And did you see a film, if you recall?

A I don't recall whether they showed movies at the time.

Q Following the speaker's presentation, did you hear salesmen in the room call holds on various lots?

A Yes, we heard them.

Q What was your understanding at that time as to what was taking place with respect to the call of holds?

A Well, each salesman had a table with two or three prospects and it was just a matter of discussion at the tables.

Q Was it your understanding that the holds -

THE COURT: Ask her what her understanding was.

MR. ARISOHN: Excuse me?

THE COURT: Ask her what her understanding was.

MR. ARISOHN: I think I just asked her what her understanding was with respect to what was taking place.

Q Let me ask you, Mrs. Mellenbrook, did the hearing of calling holds influence your decision at all in buying land that night?

A No. We were just involved in our own table, we knew what we were going to do, if anything.

Q You testified you bought, with Mrs. Rider, two commercial lots.

Will you tell us where those commercial lots were?

A Yes. They were in Unit 11.

Q What was your understanding with respect to whether those lots were developed or undeveloped?

A We knew they were undeveloped.

Q How much did you pay for those commercial lots?

A We paid $3500 for the two lots.

Q What was your understanding as to whether or not the commercial lots would be exchanged?

A There was nothing in the contract. We understood they could not be exchanged.

Q And what was your understanding as to whether or not the commercial lots, that is, your contract for the commercial lots, could be cancelled?

A It would only be cancelled on non-payment of premium.

Q Cancelled by whom?

A By Rio Rancho.

Q Did you or Mrs. Rider fell under any pressure to buy those commercial lots that night?

A Definitely not. It was our own idea.

Q You also testified you attended the dinner with your other friends, Mr. and Mrs. Gruetter.

Did they buy any land that night?

A No. They were not interested.

I'm sorry, that wasthe dinner they had decided -- they had not been interested previously at my house, but they decided that night to build -- to buy a commercial lot adjoining mine and Mrs. Rider's.

Q So that was also in Unit 11?

A Yes.

Q Do you recall how much they paid for their commercial lot?

A Same price, $3500.

Q After that sales dinner, did you go to any additional sales dinners?

A Yes, just as a matter of curiosity to see what developments might have been going on at Rio Rancho.

Q And did you ever buy any more land at sales dinners?

A No.

Q Calling your attention to February of 1966, will you tell the jury and his Honor what your next contact with Rio Rancho was?

A My husband and I had been out on the property and we sort of thought we would like to take an additional property, so I approached Rio Rancho and --

THE COURT: When was this?

THE WITNESS: In February of 1966.

A And we traded our oversized acre -- our oversized residential acre for a half acre of residential and a commercial lot, the 100 by 350.

Q In order to effectuate that transfer, did you contact Rio Rancho or did they contact you?

A No, we contacted them.

Q Am I correct that at this time, then, you and your husband owned one half acre of residential property and that you and Mrs. Rider owned one acre of commercial property --

MS. HYNES: It is not an acre, I don't believe, Mr. Arisohn. It is not an acre of commercial lot.

Q Excuse me. Two lots of commercial lot, you and your husband owned two lots of commercial property --

A Well, the commercial lot was considered one acre, although on the tax records it was two separate lots, two, 50-foot lots. But we have already considered it an acre.

Q Do you know what the size of the two commercial lots were?

A Each lot was 50 feet wide by 350 depth. The two lots combined made it one commercial piece of property, 100 feet by 350.

Q So that is somewhat less than a full acre?

A Something like that.

Q And that you and your husband also owned two commercial lots, is that correct?

A Right.

Q After you transferred half acre residential property to two lots of commercial property with you and your husband, did there come a time when you were unable to meet the payments on the commercial property you owned with your husband?

A Yes.

Oh, probably in the spring of 1966 my mother-in-law, who lived with us, developed a cancer problem which needed an operation and we didn't know whether we were going to have financial problems, have to put her in a home, so we approached Rio Rancho about the possibility of forfeiting or cancelling out our commercial property. We wanted to retain the residential.

Q What happened?

A They agreed to cancel it, but they were going to withhold the money that we had paid on the commercial property for sometime if we might decide to build, at which time they would apply what we paid in on our contract.

Q And how much had you paid in on the commercial property?

A $95.

Q And after you built your house, did you, in fact, get a check from Rio Rancho for $95?

A I got a check from them for $95.

Q Am I correct that at this time, then, after you cancelled the commercial property you owned with your husband, that you and your husband owned a half acre of residential property and that you and Mrs. Rider owned two commercial lots?

A Right.

Q Calling your attention to the summer of 1967, did you visit Rio Rancho?

A Yes.

Due to this problem with my mother-in-law, our future was a little undecided. But my husband and I talked it over and decided that if I could effect a transfer on my job to Albuquerque, we thought we would like to locate out there we liked it so much.

Unfortunately, in 1967, I couldn't secure a transfer. But while I was out at the property, I talked to Hugh Hood, and I told him we liked the property so much and wished there would be some way that we could work it out.

Q Excuse me.

Do you know who Hugh Hood was?

A I think he was -- I don't know whether he was manager of Rio Rancho or whether it was just the property manager. I'm not sure what his title was.

So he told me if I would like, he would assign a salesman to me and I could completely plan our house. We knew about what model we liked. He would draw -- oh, we had explained to them that if we could effect a move to Albuquerque we would be on limited budget; we would be on Social Security and on my small government pension and didn't know what the chances would be on a mortgage.

So he said he would -- we would plan the house, he would gather all the financial information that he could, he would put it all in writing and send the whole package to us to look over and then we would have three months in which to decide to build.

Q On that trip, Mrs. Mellenbrook, were you shown a lot that you decided to exchange into?

A Oh, yes. When I was planning the house, Mr.Cliff Rounds took me out into the building area and showed me several lots which would be -- I want to say -- which would be acceptable to building the type of house we wanted.

I specifically wanted my kitchen to face the mountains because they were so beautiful and I knew I would be spending a lot of time in the kitchen, so I specifically wanted a house and a lot that would take care of that, so I picked out the lot on which we are living on now.

Q Did you work out the numbers with Rio Rancho on that trip with respect to building your house on that lot?

A Yes.

Q And did you have to pay any extra money for the building lot?

A No. We had an excahgne, no money involved.

Q Was there paving on the road outside the lot?

A No.

Q Is there now paving on the road outside the lot?

A There is now paving on the road. They paved it in, I believe, 1970. We didn't know they were going to do it, but they paved it.

Q How much did it cost you to build your house?

A $12,600 for a two-bedroom with a large New Mexico room, family room.

THE COURT: What is a New Mexico room?

THE WITNESS: Oh, just a family room, recreation.

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Q Who built the house for you, Mrs. Mellenbrook?

A Rio Rancho, AMREP Construction.

Q When was your house completed?

A It was completed late in April of 1968.

Q When did you move to Rio Rancho?

A My husband came out with the furniture in September right after Labor Day in 1968 and then I followed in 1969.

Q Were you able to effectuate a job transfer at that time?

A Fortunately for me, but unfortunately for the other party, the girl who had my comparable job down at the AEC office at Sandia Base fell and broke her hip and I had been in contact with her and she knew that I only needed to work until June of '69 so she made arrangements with her boss to effect a transfer with my boss to her job so I was able to quit in June 1st.

Q Where is Sandia Base?

A Sandia Base is in the southeast section of Albuquerque. It is now known as Kirtland Air Force Base.

Q You testified you paid $12,600 for your house. Do you know how much your house is worth today?

A I know it's worth at least 27.

Q How do you know that?

A Because my next door neighbors had to move to Dallas, Texas because of health reasons two months ago and they sold their house for 27,000 cash.

Q Is their house like yours?

A Their house is the identical plan.

Q Mrs. Mellenbrook, did there ever come a time when you sold the two commercial lots you owned in Unit 11?

A Yes. At the time we bought those lots my husband and I were living in Cleveland, Riders were living in Cleveland. They had an only son who lived in Cleveland and we had an only daughter. When we moved to Albuquerque; their son moved to southern Ohio and I just got to thinking if anything should happen to my husband or Mrs. Rider, there might be a lot of legal problem with our daughter being in Albuquerque and their son being in southern Ohio so I approached my husband and Mrs. Rider about possibly selling our house and she agreed --

Q Selling the lots you mean?

A I mean selling our lots. Mrs. Rider said, fine, go ahead.

So I had my husband print just a very informal sign saying, A Lot For Sale, our telephone number and I put on the bottom that the adjoining commercial property would be available because I had talked to Mrs. Gruetter, who owned that property, and she felt, well, if we sold ours, they would try to sell theirs.

Q What did you do with the sign?

A We just put it on the property.

Q Which property?

A The commercial property.

Q At that time was the commercial property developed?

A No, nothing.

Q What happened with respect to the sign?

A My husband and I were going on a little trip into Arizona in April. We were leaving on a Monday. It's very firm in my mind. On Friday I was called by a real estate broker in Albuquerque. I had never heard of him, didn't know who he was, and he said, I understand you have a piece of property for sale.

I said yes, but it was commercial. He said, I know it and I may have a buyer for you.

I thought it was just more or less of a come-on so we would sign a contract and so I said, well, we will call you when we return and he said, no, I would like to strike while the iron is hot so I said okay, if you can sell it, fine.

So, oh, maybe a week or two after we came back from Phoenix --

Q Did he ask you at that time how much you wanted to sell your property for?

A Yes, I just pulled a number out of a hat and said $7,000 which is twice --

Q How much had you paid for that property?

A $3500. So we came back and he called me a week or two later and said I sold your property. We sold it on land contract so much down and the party was to pay us $100 a month split between Mrs. Rider and myself.

Q Did you ever use your sign again?

A Yes. Mr. and Mrs. Gruetter --

MS. HYNES: Can we fix a year for that transaction?

THE COURT: When did this happen?

THE WITNESS: This was in April of '71.

A Mrs. Gruetter --

Q Excuse me one second, do you recall the name of the people you sold to?

A Yes, Ernest Wakely. He was a hockey player.

Q Did you ever sign a deed over to Mr. and Mrs. Wakely?

A Yes, they paid off the property about, oh, two or three weeks I think it was before we came down here they had paid it off in full and I have the deed recorded for them and I am just going to transfer the tax papers on the records.

(Defendant Howard Friedman and Henry Hoffman Exhibit KE marked for identification)

Q Mrs. Mellenbrook, let me show you Defendants Exhibit KE for identification and ask you if you can identify it for us?

A Yes, that is the contract, Mrs. Rider and myself, selling the property to Ernest Wakely and his wife. They now reside in San Diego.

MR. ARISOHN: We offer KE.

MS. HYNES: We have no objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit KE received in evidence)

Q Did there ever come a time, Mrs. Mellenbrook, when someone else used your sign?

A Yes, Mr. and Mrs. Gruetter thought that was pretty interesting so Mr. Gruetter asked if he could borrow our sign, that he would like to just put it up on his property so we turned it over to him and of course he had to reprint the sign as far as the telephone number and to eliminate the adjoining lot.

Q Do you know whether or not Mr. and Mrs. Gruetter sold their lot as a result of that sign?

A Yes, about --

MS. HYNES: Objection, your Honor. At this point I am going to object to what information concerning the Gruetter sale and ask to have Mr. and Mrs. Gruetter called to give us that information.

THE COURT: I will take whether or not it was sold. I won't take the details.

Q Do you know whether that lot was sold?

A I definitely do. Mr. and Mrs. Gruetter --

THE COURT: All right, that is the end.

THE WITNESS: Yes, I know.

THE COURT: When was it sold?

THE WITNESS: It was sold in probably May of '71.

THE COURT: A month after you sold yours?

THE WITNESS: Yes.

THE COURT: To the same people?

THE WITNESS: No. He was called one Sunday afternoon --

THE COURT: All right.

THE WITNESS: I am sorry.

Q Do you know how much Mr. and Mrs. Greutter paid for the lot they sold?

MS. HYNES: Objection.

THE COURT: Mr. Arisohn, you know I sustained Ms. Hynes objection before you ever asked the question.

Q Mrs. Mellenbrook, did you ever get the sign back?

A Yes, we did.

THE COURT: Oh, no. Come on, we are not cluttering the record with that sign.

Objection sustained. She has described it.

MS. HYNES: Thank you, your Honor.

Q For how long have you been living in Rio Rancho?

A My husband since September of '69 and myself since January 1969.

Q That is about eight years?

A Right.

Q During that time, Mrs. Mellenbrook, have you seen growth and development at Rio Rancho?

A We certainly have and it is unbelievable.

Q Can you describe that growth and development for the jury and his Honor?

A Yes. When we first moved there were probably as I said about twelve houses and a recreation center.

Now, I can start. Rio Rancho originally had 16 units. It now has 80.

Next to it now are 80 condominiums.

There is a little vacant space and then we have our shopping center which contains grocery stores, beauty shop, barber, two banks, the Rio Rancho Administration Building and just within the last year they have added another section which has the Sheriff's Office, the only satelite of the Lovelace Bataan Clinic in New Mexico, barber shop, beauty shop.

Across the road is a lighting plant, two restaurants. The Felician Sisters, I am not Catholic so I don't know the correct title, but they have just built a $1 million Mother House which takes care of all the nuns from four states --

MS. HYNES: Objection.

THE COURT: Overruled.

Go ahead. We have heard about this.

A The National Secretaries Apartment Complex had originally 104 apartments. They have added 24.

We have an industrial park encompassing probably 15 or 20 businesses.

We have a beautiful country club and just around the country club there is a section of strictly custom homes in the 50, $75,000 class.

Up at the other end of the country club they just opened up a new section of townhouses and patio homes.

Then just above that section in 11 they have opened a brand new section of moderately priced homes from 24,000 to maybe 30 which I think within about two months was completely sold out, about fifty homes because of a new model village they put in.

I am trying to go around in a circle. Oh, and then 171 condominiums up in the country club area.

At the foot of our hill, which we have to pass every time we go to Albuquerque, within the last year they have opened a large shopping center encompassing two banks, chain grocery store.

MS. HYNES: Can we have a clarification on whether that is on the property at Rio Rancho, your Honor?

THE WITNESS: It is not in Rio Rancho, no, I am sorry. It is at the foot of our hill so we call it.

Q Mrs. Mellenbrook, based upon your seeing Rio Rancho since 1965 when you visited and based upon your living there since 1969, thinking back on the sales presentations you had in your house and the dinners you went to, can you recall anything you heard or saw at any of those sales presentations or dinners which was in the slightest bit misleading?

MS. HYNES: Objection.

THE COURT: Overruled.

A Definitely not. It is everything they ever promised and a lot quicker than we ever dreamed of.

Q Do you recall ever witnessing any high pressure sales tactics?

A Never. Never to my knowledge.

Q Do you believe you were cheated by Rio Rancho?

A Definitely not.

Q How do you like living at Rio Rancho?

A As far as I am concerned, I was born and raised in Cleveland and I wouldn't live any place else.

Q Any place other than Rio Rancho?

A Right.

MR. ARISOHN: We have no further questions.

THE COURT: You may cross examine.

MS. HYNES: Thank you, your Honor.

XXX

CROSS EXAMINATION

BY MS. HYNES:

Q Mrs. Mellenbrook, my name is Patricia Hynes; I represent the government.

You testified that you were first contacted by Acres and Homes in Ohio?

A In Cleveland.

Q Was that a telephone contact?

A Yes.

Q Then a sales person came to your home and you bought a half acre of land?

A Right.

Q Now, at the time that you bought that half acre of land, that was in 1964?

A Right.

Q Did you expect to relocate?

A No.

Q Or did you have that in mind?

A No, retirement was not in our plans at all.

Q You testified that you bought that half acre for investment?

A Right.

Q Do you recall at the time that the sales person came to your home that he had certain charts with him, small charts which compared an investment in Rio Rancho or investment in land with an investment in stocks, an investment with money in the savings bank?

A That I don't recall. I know he had a map of Albuquerque and he had a map of Rio Rancho.

Q Do you recall if he said anything about investing in land as opposed to investing in the stock market or having money in a savings bank?

A No, not that I recall. We had no interest in stocks and bonds. It was strictly we liked the west. We had vacationed in Wyoming and Colorado and we just liked the west and thought we would like to have a piece of land out there.

Q What do you recall that the salesman said to you on that occasion that caused you to buy this land for investment?

A Well, as I said, we liked the west so much and we just bought it, let's put it that way. We thought it would be a good investment sometime in the future. We had no idea when. We didn't care when.

Q At the time the salesman visited your house in 1964 and you bought that half acre, you said that you read the contract, the purchase contract?

A Yes.

Q And the purchase contract provided that the roads were built to Sandoval County specifications?

A Right.

Q In 1964, did you know what Sandoval County specifications were for the roads?

A No. As I say, it was in the contract. We had no idea what the specifications were at all.

Q Now, you said that you had a sales person -- another situation where a salesman came to the home this time with your friend Mrs. Rider?

A Yes.

Q Is that correct?

A Right.

Q That was shortly after you purchased your half acre?

A Yes, that was the next month.

Q Was that the same sales person?

A Yes.

Q Did he give basically the same presentation?

A Yes.

Q Did Mrs. Rider and her husband buy any land at that time?

A Yes, they bought a half an acre of residential land.

Q Do you know whether Mrs. Rider and her husband had any expectation of relocating at Rio Rancho?

A Well, no, they didn't have any definite retirement plans. They thought if we liked it out there maybe they would, but as I say, it was so vague at the time as far as relocating.

Q It was a possibility but it wasn't definite?

A At that time it --

THE COURT: She said vague was the word the witness used.

A At that time it was a vague possibility.

Q You stated that you visited Rio Rancho after you bought your half acre?

A Right.

Q Your first visit to Rio Rancho was in 1965?

A In the Summer.

Q At that time when you visited Rio Rancho, did you expect to relocate at Rio Rancho?

A No, it was still -- we hadn't even considered retiring, we couldn't afford it to tell the truth.

Q You visited the property in 1965, did you buy any additional property at that time?

A No.

Q Then in October of '65, you attended a sales dinner?

A Right.

Q You said that was one of their first dinners as far as you knew?

A That was one of the first dinners we went to.

Q At that dinner, about how many people were in attendance?

A That I wouldn't be able to tell bec ause each salesman had maybe two or three couples maybe, but I don't recall how many tables. Maybe four or five.

Q Do you recall that there was a sales person in the front of the room who gave a presentation?

A Yes.

Q Do you recall -- you said that you didn't recall whether or not there was a movie at that dinner?

A Right, at that time I don't remember.

Q Do you recall whether or not a chart was used at that sales presentation which compared an investment in land with the stock market and banks?

A No, that I don't remember.

Q Do you recall whether there was a statement made about the growth of Albuquerque?

A Yes, because our salesman originally told us about that.

Q Do you recall at the sales dinner a statement being made that Albuquerque was bursting at the seams?

A He didn't put it that way. He said Albuquerque had certain limitations, it could only go so far to the east and west and eventually it would have to go to the northwest.

Q Do you recall the speaker in the front of the room stating that Albuquerque was hemmed in on three sides and could only grow to and through Rio Rancho?

A Eventually it would be hemmed in. I mean it only had, as I say, certain limitations on three sides and the northwest would be where it would have to go in the future. He didn't say when, but in the future.

Q Did that sales person, did you testify that the sales person when he came to your home when you first bought your property talked about available land in the northeast section of Albuquerque?

A No, not available land. He told about Albuquerque could only grow so far to the east because of the mountains. But at that time there was still a lot of land to be developed there. He didn't say it had to happen tomorrow. He said in the future.

Q So the sales person when he came to your home, he told you that there was a lot of land in the northeast section that could still be developed?

A He didn't tell us. He showed on the map.

Q Did he make any statement with respect to the northeast?

A Well, he said -- yes, he had said that there was land available in the northeast yet but it was growing but eventually it would have to go the other direction.

Q Did you ask him any questions as to how much land was available in the northeast?

A I wasn't interested at the time. We just happened to -- we took his word for it that eventually it would go to the northwest. We thought Rio Rancho had possibilities and we weren't interested in Albuquerque.

Q When you went to the sales dinner, did the speaker in the front of the room mention anything about available land in the northeast?

A Not available -- you mean for buying purposes?

Q For building purposes.

A For building, no, he, too, said there were limitations. He was not interested in Albuquerque property. He was talking about where Albuquerque would eventually --

Q Grow?

A Grow.

Q And that was?

A To the northwest eventually.

Q Where Rio Rancho was located?

A Right.

Q You bought your commercial property at the dinner?

A Yes. Are you speaking about Mrs. Rider and my commercial property? Not my husband's? The property we bought at the dinner was Mrs. Rider and myself jointly.

Q That commercial property you bought at the dinner?

A At the dinner.

Q Do you recall whether there was an allocation sheet for the property that was available that evening at the dinner?

A Yes. Yes, that I got.

Q Was your commercial property on that allocation sheet or did the salesman tell you about it?

A Frankly, I don't think I paid too much attention to it. He handed us the sheet and said this was available and that was available and I think we probably took a piece that was less expensive maybe than others, I don't recall.

Q You recall your sales person calling a hold on the property that you were buying that evening?

A I don't know definitely whether he did because it was something you discussed at the table and if we got to the point where it was available, he probably had to check, but

I don't recall that he definitely said hold.

Q Do you recall that you had to buy at least two commercial lots?

A Yes, that was considered one piece, the two 50-foot lots.

Q Then you testified that there came a time when you didn't want to continue your payments on the commercial lot that you and your husband had bought and that was the sum of $95 and when you built your home you were able to use that $95.

A It wasn't that we didn't want to. It was that we couldn't keep it up financially.

Q Right, you had financial difficulties.

A Right.

Q Your agreement with Rio Rancho was that if you built a home they would apply that $95 toward the home?

A Right. We wanted to retain the half acre just to have. Still in '65 or even in '66 we had no retirement plans.

Q That was the half acre residential that you had at that time?

A Yes.

Q Did you discuss -- at the time you had this agreement with Rio Rancho, did you discuss the possibility of building a home?

A No, at that time we had no thoughts of building. Our plans were too indefinite because of my mother-in-law.

Q So the agreement was that if you should ever build a home, you could have that $95 credited toward the home purchase?

A The building, right.

Q If you didn't build a home I take it then --

A It would have been forfeited probably.

Q Do you recall the name of the real estate broker in Albuquerque who sold your property?

A I think it was Bill Campbell. I have never heard of him. I never had any dealings with him since.

Q The property he sold for you was sold to a Mr. Wakely?

A Ernest Wakely.

Q Was Mr. Wakely a resident of Albuquerque?

A No.

Q He wasn't?

A He was a hockey player living in Canada at the time.

Q Did you ever meet Mr. Wakely?

A No, I never met him, but occasionally when I would -- I paid his taxes and I would write him and I invited him to stop at our house if he ever came to Rio Rancho and I would take him out to the property. I don't know whether he has ever been there or not.

Q You don't know whether Mr. Wakely has ever seen the property or not?

A No.

Q Your house is in unit 16?

A Yes.

Q Do you know how large Rio Rancho Estates is, how many acres it is?

A I think originally it was 55,000, but I don't know the acreage now. I have no way of knowing. I have never paid any attention.

Q So that I take it that you don't know what per cent of the property has been developed to date?

A No, I have no way of knowing.

Q Do you own any property today at Rio Rancho?

A What's that?

Q Do you own any property other than the lot that you have your house on?

A Right.

Q You don't own any other property?

A No.

MS. HYNES: I have no further questions, your Honor.

MR. ARISOHN: No redirect, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. ARISOHN: We are going to call Jose Luis Yguado and may I get my notes out of the back room?

Thank you.

THE COURT: We will have a short recess.

(Recess.)

(Continued on next page.)

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(In open court - jury present)

JOSE LUIS YGUADO, called as a witness, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. ARKIN: Thank you, your Honor.

DIRECT EXAMINATION

XX

BY MR. ARKIN:

Q Mr. Yguado, where do you live?

A In Peralta, New Mexico.

Q Where is Peralta, New Mexico in relation to Albuquerque?

A About twenty miles south.

Q What is your profession, sir?

A I am a landscape architect and a city and regional planner.

Q Would you detail briefly, if you will, for his Honor and the jury your educational background?

A Well, I have a degree in landscape architecture from the University of California, Berkley.

I did additional work there in urban and city planning.

I did various courses at the University of New Mexico, in planning and sociology.

Q Did you say you took courses in planning?

A Yes, sir.

Q At the University of California at Berkley?

A Yes, sir.

Q What courses did you take?

A Urban development and planning, parks and recreation planning, urban sociology, public administration, that kind of course.

THE COURT: Mr. Yquado, two things. You have to keep your voice up and speak more slowly.

THE WITNESS: Yes, sir.

MR. ARKIN: Thank you, your Honor.

Q As if you were speaking to me, I have to hear it, all right.

A Very good.

Q And everybody in between will hear it.

Are you a member of any professional organization. Mr. Yquado?

A With regard to planning I belong to the American Institute of Planners and to the American Society of Landscape Architects.

Q Would you detail for his Honor and the jury your previous work experience in the planning field?

A Well, I worked while I was in college in the Alameda County Planning Office. That was in the San Francisco Bay area.

Q Alameda County, San Francisco, California?

A Yes.

Q Berkley?

A Yes, sir.

Q Okay.

A I was a planner there while I was in school. After that I went and worked for the City of Albuquerque as a town planner.

Subsequent to that I went into private practice as a consultant and have worked as a town planner for some fifteen years.

Q Was it after you completed your courses at California, that is the University of California, that you went out to Albuquerque?

A Yes, sir.

Q Why did you go to Albuquerque?

A Well, I guess a lot of reasons, but I felt a kinship to New Mexico and liked it for one reason.

As a planner I had looked at the census data for 1960 and it was within the ten fastest growing cities in the country and I felt there was going to be growth there and there would be opportunities for a young planner to get in and do planning work.

Q What was your first job in Albuquerque in the planning field?

A I worked for the city of Albuquerque.

Q In what capacity?

A As an assistant planner doing planning studies, preparing master plans, reviewing subdivisions, analyzing subdivisions and what have you.

Q Was that in the City Planning Department?

A Yes, sir.

Q Do you know George Carruthers?

A Sure.

Q Did you work with him?

A Yes, sir.

Q How?

A We shared the same room. In essence we were doing the same kind of work. He was working in subdivisions and subdivisions review and I worked, developers would bring in subdivisions or master plans and we would review them and analyze them and make recommendations.

I also worked in developing master plans for various parts of the city.

Q With Mr. Carruthers?

A Yes.

Q And alone?

A Sure.

Q Did Mr. Carruthers have a supervisory relationship with you or you with him?

A No, we were both planners.

Q On the same level?

A Yes, sir.

Q How long were you in the Albuquerque City Planning Department?

A About a year.

Q Did you then leave that department?

A Yes, I left the employment of the city.

Q To do what?

A To plan as a consultant, as a private consultant for other cities or developers. As a consultant rather than an employee.

Q In effect did you go into private practice?

A Yes, sir.

Q Did you form your own firm?

A Yes.

Q What is the name of your firm?

A The Yquado Association.

Q Did you do any work for the City of Albuquerque after you left the Planning Department?

A Yes, the following year as a matter of fact.

Q What did you do for them?

THE COURT: When did you leave?

MR. ARKIN: I am sorry, your Honor, you are quite right.

Q When did you begin employment, what year and when did you leave employment with the city?

A I went to work for the city in June of '60 after I left the University and I worked until the following May of '61 that would be.

Then I went back in February of '62 and did some consulting specifically for the city.

Q What kind of consulting work did you do for the city?

A Well, we were on a joint venture with a firm called Harland Barthlmew & Associates.

Q Do that more slowly.

A We were on a joint venture with another planning firm called Harland Barthlmew. They are a large planning firm and we were a small one and we jointly venture to do a land use and zoning plan for the City of Albuquerque and the County of Bernalillo.

Q By joint venture you mean worked together with them?

A Yes, sir. Then we did a parks and recreation master plan for the city and county.

Q Have you done any work for any other communities in New Mexico?

A Yes.

Q I am talking about work in the planning area.

A Yes, sure. We have been consultants -- our work basically is consultants or staff to the smaller cities and towns that don't have their own staff so we have gone in, for example, Taos, New Mexico, Las Vegas.

Q Is that Las Vegas, New Mexico and has no relationship or similarity to Las Vegas, Nevada?

A Absolutely not. Mesilla, Las Cruces, Fountain, Colorado, Shavey County, Colorado.

Q These are communities outside of New Mexico now you are going into?

A Yes, Salida. Bona Vista, Colorado. Crystal City, Texas. I am just naming --

Q Cities or communities you have done work for?

A And we have worked in regions. The Southern Rio Grande Council of Governments which is a three county region, we did regional planning and we were the staff for the COG down in the southern part of New Mexico.

Q COG being Council of Governments?

A Yes, sir.

Q As a general matter, how were you paid for this consulting work that you did for various communities including Albuquerque?

A Well, when we did public work, it is usually done with grant programs. There is a program in the Department of Housing and Urban Development called the Housing Act of 1954 within which there is a Section 701 and we call it 701 planning.

Essentially it is a comprehensive planning program that HUD funds and provides funds to various cities, towns and counties to conduct planning.

Q HUD being a federal agency?

A Yes, sir.

Q So that indirectly you are paid by federal monies, is that correct?

A Yes, sir.

Q Would you be a little bit more precise, if you will, about the kinds of planning work you have done for communities within New Mexico?

A Well, essentially comprehensive planning and the reason we use the term is to try to look at the whole picture of what a city is, where it's been, where it's going.

In doing that typically in a typical contract, for example, we would look at the people, how many people there, what kinds of people, the ages, how long they have lived there, what has been the population growth up to that time.

We would look at the economic base. Where they worked. How much money comes into the town. The existing land. The arroyos, the mountains, the hills, the trees. We would look at all of the urban development that is there then, the houses, the streets, the waterways and what have you and based on that we would project population.

We would reflect the trend of growth. We would look at what is there and project future land use plans. We would make water and sewer master plans. We would make zoning regulations and zoning maps. Subdivision regulations. So we look at the past, we look at where it is and we try to project where the city is going to go.

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Q Have you been doing this kind of work since 1962 to the present time?

A Yes, sir.

Q In your own firm?

A Yes, sir.

Q Have you ever done any work for developers or businesses located in the west side of Albuquerque?

A Yes.

Q By that I mean the west of the Rio Grande.

A Yes.

Q For whom did you work?

A Well, right after I left the city I prepared some master plans and subdivision plans -- I guess my first project was for Ed Snow, what was called Snow Vista.

Q You are pointing towards Government Exhibit 1075. You don't know that, but it is.

A Sure, all right. I was just looking at it for recollection.

Q Why don't you just detail if you will or list if you will those people on the west side for whom you have worked. We will get to that in just a moment.

A I worked for Snow Vista, for D.W. Falls, that's Volcano Cliffs. Albuquerque Gravel Products, which has some land holdings on the west side. College Heights.

Paradise Hills. Rio Rancho Estates. I think that's most of the people that I have worked for.

Q What kind of work did you do for these developers on the west side, the ones you just mentioned?

A Well --

Q Characterize it generally, if you will.

A Somewhat similar what you do for cities but on a much smaller scale. We look at the land, prepare what we call a master plan. We develop programs for roads and streets and land uses. We develop zoning maps. We work with roadway alignments.

On occasion we would present to the city a zoning change or an annexation on behalf of the client. Master planning for development of land.

Q During what years, if you will tell the court and the jury, have you worked for west side developers?

A Well, it was --

Q Give me the span of years.

A Oh, most of it was in two or three years right after I left the city. After that we started going out of town doing other cities so we didn't do as much locally.

Q I want to direct your attention to that exhibit which you were looking at and, if you would, would you get off the stand --

MR. ARKIN: Is there a pointer here somewhere?

MR. KAUFMAN: Here.

MR. ARKIN: Thanks.

Q Step back so that his Honor and the jury can see it and I am goingto go back and ask you some questions about this. You stand right there.

With respect to Government Exhibit 1075 in evidence, are you able to on that exhibit identify the northeast portion of Albuquerque generally?

A Yes, that's this area here.

Q As of today, 1976, based on your knowledge of Albuquerque -- 1977, excuse me -- 1977, January 7th, and your expertise as a planner, are you able to describe referring to the northeastern portion of Albuquerque the availability of vacant land for residential or commercial construction?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Why?

MR. KAUFMAN: The witness has testified he hasn't done -- maybe we ought to do this at the side bar.

THE COURT: No.

MR. KAUFMAN: I don't think the witness has testiifed about any work that he has done in the Albuquerque area since 1964, I believe, and I don't see how he is qualified --

THE COURT: You can do that on cross examination.

Objection overruled.

Q Using the pointer and talking up, describe, if you will, the availability of land in the northeastern portion of Albuquerque for residential or commercial construction.

A It is pretty easy. The only spot that's open here, you see.

Q Are you familiar with North Albuquerque Acres, the region which has been called North Albuquerque Acres?

THE COURT: Put the pointer on North Albuquerque Acres.

(Witness complies.)

THE COURT: You have indicated that it is the land south of that, that is the only land available in the northeast for development?

THE WITNESS: Yes, sir, this small portion here.

THE COURT: All right.

Q What about North Albuquerque Acres, if you will?

A Well, North Albuquerque Acres has been there for, I don't know, 30 to 40 years and essentially at the time I worked in the city and since there is apparently a lot of title problems and difficulty and out-of-state owners and what have you. The land generally has not been available for development.

Q Are there any Indian reservations in that area of Albuquerque?

A Yes, next to North Albuquerque Acres is the Sandia Indian pueblo.

THE COURT: That runs from what to what?

Q With the pointer, sir.

A The Sandia pueblo is right at the Elena Gallegos grant line. It comes up pretty close to the town of Bernalillo, which is here, I guess.

THE COURT: And over to the Rio Grande River?

THE WITNESS: Yes, sir, right to the river, this is all farm land.

Q There is an area within the area which we have just spoken about which is called the Northeast Heights, is it not?

A Called what?

Q Northeast Heights.

A This area is referred to as the Northeast Heights generally.

Q Where is the tramway on that exhibit?

A The tramway development?

Q Yes.

A The tramway development is right in this area.

Q What is the tramway development, if you know?

A Well, it's a cable car that goes up the side of the mountains and people ride it and eat at a restaurant and there is a sky area at the top of the mountain.

Q Do you know how much land is available within what you have described as the Elena Gallegos grant?

THE COURT: What is the Elena Gallegos grant?

Q Otherwise known as the Simms property? Shall I use that?

THE COURT: The witness hasn't indicated.

Q Would you delineate on that exhibit the Elena Gallegos grant?

A The Elena Gallegos grant is essentially -- well, there is a line here, right across here, just north of North Albuquerque Acres up to the crest of the Sandia Mountains going south across this way. Originally all the way to the river is the Elena Gallegos grant within which is the North Albuquerque Acres and within which is the Simms property.

THE COURT: Do you mean by your statement before that the only portion available for this development is the Simms property?

THE WITNESS: Yes, sir, I was pointing to this area here.

THE COURT: That's Simms property?

THE WITNESS: I think it is the Boys Academy, but generally referred to as the Simms property.

Q Do you know today in 1977 approximately the amount of land available for commercial or residential development within the area which you have just been talking about?

A Yes. I looked at this map earlier, there is about 2500 to 3,000 acres.

(Continued on next page.)

Q Are you able to identify the Cibola National Forest on that exhibit?

A That's easy. All of this (indicating).

Essentially I think this line is pretty close to the boundaries of the national forest area.

Q Is that area available for residential or commercial development?

A No, not that I know of.

Q It's a national forest?

A Sure.

Q What about the other side of the Cibola National Forest?

A Well, you have to go a long way. You are over here (indicating). On the other side of that is foothills and what is called the Estancia Villa.

Q That is the other side of the mountain, in other words?

A Yes, sir.

Q What about the southern portion of the Albuquerque region as reflected upon Exhibit 1075, can you identify that with the pointer?

A Well, this area I assume you are talking about (indicating), south of Central Avenue, this area here?

THE COURT: Yes.

Q Does the southern portion of Albuquerque which you were pointing to contain an arroyo known as the Tijeras Arroyo?

A The Tijeras Arroyo actually starts up here in the Sandia Mountains and it drains this entire water shed area and it runs down like so. It is narrow like over here because it moves a lot faster and as it begins to come to the flood plain it widens, and this is the Tijeras Arroyo which ultimately comes into the river (indicating).

Q With respect to the southern quadrant of Albuquerque --

THE COURT: Southeastern?

MR. ARKIN: Yes, southeastern, your Honor.

Q Southeastern quadrant as reflected in Governments Exhibit 1075, what land, if any, is available for commercial or residential development?

A None.

Well, the photograph reflects the fact that this area essentially is developed.

We have the Sandia Kirtland military base in this area, all of this (indicating).

We have the municipal airport, which used to be part of Kirtland Air Force Base, it is now the municipal airport.

Next to that is the Tijeras Arroyo and next to that is state land that is held in trust for the university (indicating).

Q Moving due west to the southwestern quadrant of that particular exhibit, are you able to identify on that the Atrisco grant land?

THE COURT: Where are we now, the south --

MR. ARKIN: The southwest, your Honor.

A Well, the Atrisco grant -- this is Central Avenue.

The Atrisco grant land actually goes north and south of Central Avenue.

Q So it is both in the southwestern and northwestern quadrant, is that correct?

A The Atrisco grant is like to the river and beyond here to the Rio Pueraco, so it comes out to about here (indicating). It is essentially this area (indicating).

Q What about the Pajarito grant?

A That is there and that goes south to Isleta pueblo and below that is Valencia County.

Below the Pajarito grant is the Isleta pueblo, which runs across this entire area (indicating).

Q Within the southwestern quadrant -- again, I am referring to that particular exhibit -- are there any government lands?

A In the southwest quadrant?

Q Yes, sir.

A There is some patchwork of government land.

Let's see. This is Central Avenue here (indicating). There is some patchwork of federal lands in this area, in here (indicating).

Of course, when you go further west, there is substantially more.

Q Would it be fair to say, then, that the only available area for substantial new growth from Albuquerque is in the northwestern quadrant of that particular exhibit?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

There are 2500 acres, he says, in the northeast.

You haven't asked him what is available in the southwest.

Q Do you know what lands, if any, are available in the southwest for commercial and residential development?

A Well, the only commercial and residential lan that is there developed is in this valley area, and that is very old development.

The Pajarito and Atrisco grants are here and I don't know of any land specifically available, except for the Snow Vista subdivision in this area (indicating).

Q Any industrial park in Atrisco?

A You are talking south of Central, I guess?

THE COURT: That's right.

Q Excuse me, you are right, you are right.

Then my question is, would it be fair to say, then, that the only available area -- and referring, again, to 1075, that particular exhibit, for substantial development of Albuquerque is in the northwestern quadrant?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Aside from the 2500 acres or so which remains in the northeast, would it be fair to say that the only area for development, substantial development, is in the northwest quadrant?

THE COURT: No, because he hasn't told us what is up there.

It may be all tied up in land grants as far as this witness' testimony is concerned.

Q Let us talk about the northwestern part.

MR. ARKIN: You are quite right, your Honor.

Q With respect to the northwestern quadrant, would you identify that on the exhibit for his Honor and the jury?

A Well, the river, Central Avenue and this area here (indicating).

Q Within that area, are there any government or state owned lands of which you have knowledge?

A Sure.

There is federal, there is state and city.

Essentially, a block in here of about 20 or 30 square miles of federal and state land is in this area (indicating).

The city recently acquired two sections of that land, two square miles, and you can sort of see it here. There is sort of a light line in here (indicating). So this is the city land and I understand it is their policy to try to acquire additional land and it will be kept as an open space reserve with possibly an airport at some future time in that area (indicating).

Q What else --

(Continued on next page.)

THE COURT: Any other land subject to land grant problems that we have heard so much about?

THE WITNESS: Well, as we said, the Pajarito and Atrisco are, in essence, this area.

(Indicating)

Actually, this is all Atrisco I think right up to about here (indicating), so all of the Atrisco grant is subject to ownership title problems, sort of like North Albuquerque Acres. People live here but they don't know who they are, and over there they don't live in Albuquerque (indicating).

So this is Atrisco land, this is the federal land that we just spoke of, this is, as you know, the escarpment, which is a constraint to development. That is why the city bought their two sections of land up here to keep it an open space (indicating).

Q Why is it a constraint to development?

A You can just see the tops of the volcanos and at one time, a long time ago, there was a lava flow and this is, in essence, lava or base solid rock.

THE COURT: Is there any land to the east of the escarpment that is available?

THE WITNESS: This land in here is developable from my point of view (indicating),. The escarpment comes up here and up into Paradise Hills. I would say this area to the east, but this is Coors Road and to the east of Coors Road is a flood plain, so the flood plain is essentially delineated by Coors Road here and I guess the interstate on this side, so the city's policy is to control very rigidly any development in the flood plain (indicating).

So east of the escarpment, I would say, and west of Coors Road in this strip is --

THE COURT: How much land is involved in that?

THE WITNESS: If I had to guess, I'd say --

Q Don't guess, estimate.

A Wait, I will measure.

I think I know the scale of this map.

MR. KAUFMAN: Can we have what the witness' assumption is, your Honor, so we know it is accurate?

THE COURT: Tell him what it is.

A About two inches to a mile.

THE COURT: What is it?

MR. KAUFMAN: An inch equals a half mile.

THE COURT: So the assumption is correct.

THE WITNESS: I measured the roads on each side and I know where they are and they are miles apart.

So roughly in this area -- this would be about a mile wide and in some areas about a mile and a half, and it would be about six -- six square miles.

THE COURT: Six square miles in Bernalillo County?

THE WITNESS: Yes, approximately.

THE COURT: Any other area in Bernalillo County?

THE COURT: That's available?

THE COURT: Yes.

THE WITNESS: No.

In the northwest quadrant I don't know of any, except that two or three thousand --

THE COURT: That is northeast?

THE WITNESS: Yes.

But as far as this area north of Atrisco -- you have what is called a gas line here so it is essentially this area here east of the escarpment and west of Coors Road that I consider --

THE COURT: You call that about six square miles?

THE WITNESS: Yes, I would say.

Again, I am measuring roughly, about six to eight square miles.

THE COURT: Are there any developments in that six square miles now?

THE WITNESS: Well, most of the developments that have occurred on the west side since I have done planning have been in that area.

THE COURT: Can you give us the names of them?

THE WITNESS: Well, there is, of course, the University of Albuquerque.

There is College Heights.

The Volcano Cliffs, which is D.W. Falls originally.

There is Taylor Ranch, which sort of sets right in this area (indicating).

There is some minor subdivisions in here and, of course, Paradise Hills has master planned an area here (indicating).

That is within Bernalillo County.

THE COURT: All right. Now you can go, Mr. Arkin.

MR. ARKIN: Thank you, your Honor.

Q My question is, still, based upon your knowledge of the Albuquerque area and your experience as a planner, assuming substantial growth of Albuquerque, where must it go?

MR. KAUFMAN: Objection to substantial growth, your Honor.

THE COURT: Why don't you just take the facts as he has testified to and ask him his opinion?

Q What is your opinion, sir, of the direction of growth of Albuquerque?

A Well, I think this is the gas line and I think it is essentially this area (indicating).

From here, this point, to about here (indicating).

Q Which direction is that?

A Northwest.

Q For how long have you held the opinion that Albuquerque would grow to the northwest?

A Well, I have been in Albuquerque about fifteen years, and after I was there about a year and having worked and looked at Albuquerque, I was of the opinion that it would go to the northwest, so I would say fourteen or fifteen years.

Q Did you prepare a report expressing that opinion?

A Yes, I am sure.

Q Get back on the stand, please.

I show you Defendants Exhibit EK for identification (handing).

Do you recognize that?

A Yes. It's growth and development study that I did.

Q When did you do it?

A 1962. The latter part of 1962.

Q This is your product?

A Yes.

MR. ARKIN: We offer it.

MR. KAUFMAN: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: Yes?

MR. KAUFMAN: Your Honor, this is the first time we have seen EK.

We had been told in the past that --

THE COURT: EK was marked weeks ago.

MR. KAUFMAN: Yes.

This is our version of that preliminary analysis, your Honor.

THE COURT: You say it is different from this?

MR. KAUFMAN: I think you can just look at it and see that it is about three times as thick as this.

THE COURT: Mr. Arkin?

MR. ARKIN: That is the same one I marked about a month ago, Judge, and I thought the prosecution had it a long time ago.

MS. THOMPSON: Your Honor, maybe I can be heard on this.

I believe the copy that Mr. Kaufman has is an excerpt digest of it that was printed by Rio Rancho and will be brought out in the testimony that will come.

During the course of tendering the documents, we tendered all documents made by Mr. Yguado. I asked Mr. Kaley whether he had the big study and the little study and I believe he said yes.

MR. KAUFMAN: The big study was what we assumed was Mr. Yguado's master plan for Rio Rancho. That is a third document.

We had never seen this one before, never knew it existed, and I am going to need at least during the lunch to compare what is in there --

THE COURT: You may read it during the lunch hour.

MR. ARKIN: Your Honor, would you like to break for lunch now, then?

THE COURT: Do you have anything else you want to ask?

MR. ARBIN: Yes, I have a great deal.

THE COURT: What other witnesses do you have today besides Mr. Yguado?

MR. ARKIN: Just him.

THE COURT: Just him?

MR. ARKIN: I have questions based upon this report.

THE COURT: All right.

Maybe we better break for lunch.

(In open court)

THE COURT: We will break for lunch to 2:00 o'clock. It is snowing out and you may need a little more time. That will give Mr. Kaufman a little more time.

(Luncheon recess)

A F T E R N O O N   S E S S I O N

2:15 P.M.

(In open court - jury present)

JOSE LUIS YGUADO, resumed.

THE COURT: You may proceed.

MR. ARKIN: Thank you, your Honor.

Your Honor, we have a tender on board.

THE COURT: Yes, Mr. Arkin.

MR. KAUMFAN: I have no objection.

(Defendants Exhibit EK received in evidence)

DIRECT EXAMINATION CONTINUED

BY MR. ARKIN:

Q Mr. Yguado, did anybody from Rio Rancho or AMREO pay you any money to prepare this study?

A No, sir.

Q Did anyone from either of those two companies tell you to include any particular statements in that study?

A No.

Q Or consult with you in respect to it?

A No.

Q Do you know of your own knowledge whether

Rio Rancho or AMREP ever had copies of this study in their possession?

A Yes. As I recall they bought six copies from us.

THE COURT: When?

Q When was that, the next question?

A I don't remember exactly.

THE COURT: Roughly?

THE WITNESS: I would say in mid-'63.

Q Aside from the fact that they bought six copies from you in mid-'63, is there any other reason that you know that they had copies in their possession?

A I read a copy of the proof, they made a condensation of it.

Q Did they ask your permission to make a condensation?

A Yes.

Q Did you give permission?

A Yes.

Q Have you seen such condensation?

A Yes.

MR. ARKIN: Do you have that exhibit around here?

Please mark this, Mr. Frezzo.

It was marked for identification only. Please put a defense sticker on it.

(Defendants Howard Friedman and Henry Hoffman Exhibit KF marked for identification)

xx

Q I show you KF for identification.

Are you able to recognize that, Mr. Yguado?

A Yes, that is the condensation of the report.

Q That is a condensation of your report which you prepared in 1963, right?

A Yes, sir.

MR. ARKIN: We offer it.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

XX

Q Mr. Yguado, was this the only version of the condensation made?

A Yes, I think it is the only one I have seen. I have seen one with a yellow cover, but essentially as I recall it is the only one.

Q Do you know who made the condensation?

A The Rio Rancho people, but I don't know who.

Q Do you know who was responsible for doing it?

A No, I don't.

Q Do you know how this condensation was used?

A No. They asked if they could excerpt information from this and I was glad to have them do it.

Q But you don't know how it was used?

A No, not particularly.

THE COURT: We are talking about the admission of this. The only thing is as a condensation is it a truthful version?

THE WITNESS: No, I think some of the maps they have added showing where Rio Rancho was.

THE COURT: Does that distort the study that you were making?

THE WITNESS: No, not at all.

BY MR. KAUFMAN:

Q Were certain things omitted in the condensation that were included in the larger study?

A Every bit of the copy wasn't in the condensation.

THE COURT: That is what condensation means, I think, Mr. Kaufman.

If you want the table, surely, Mr. Kaufman, it is EK.

MR. KAUFMAN: I have no further voir dire, your Honor.

I do object.

THE COURT: Overruled.

(Defendants Howard Friedman and Henry Hoffman Exhibit KF received in evidence)

xx

BY MR. ARKIN:

Q Mr. Yguado, referring to the original study you did, not the excerpted version, that is EK, what kind of data or information did you utilize in the preparation of your report?

A Well, I was working, of course, on the west side of Albuquerque at the time and I had general planning information in the area from personal knowledge and I was in constant connection with the Planning Department of the city, the information and data available from the city.

You will note that a lot of the information in there is not, in fact, my information, but city information.

THE COURT: You mean the City Planning Board?

THE WITNESS: Yes, sir.

We use some of their documents and their data to provide information for the report.

MR. ARKIN: Your Honor, may I read two

brief paragraphs from this exhibit?

THE COURT: You may.

MR. ARKIN: Thank you very much.

I am referring now, Mr. Kaufman, to page 7 of EK, the fourth paragraph on that page.

(Mr. Arkin read from Defendants Exhibit EK in evidence to the jury)

MR. ARKIN: Reading from the last paragraph on that page, page 7, it reads as follows:

(Mr. Arkin continued reading from Defendants Exhibit EK in evidence to the jury)

Q Mr. Yguado, with respect to those statements that I just read, were those your opinions back in 1963?

A Yes, sir.

Q Are they your opinions today?

A Yes, sir.

THE COURT: Pardon me. Just to complete the record, would you indicate on that exhibit what you consider the northwest mesa to be.

THE WITNESS: The mesa area specifically, of course, is the high plain.

THE COURT: Above what you call the escarpment?

THE WITNESS: Above the valley. You come

on up and essentially this is the mesa area. I think of the mesa area as essentially above Coors Road.

THE COURT: Above Coors Road or to the west of Coors Road.

THE WITNESS: West mesa is a plain.

THE COURT: I know.

THE WITNESS: There are levels on the plain essentially above and below the escarpment but I think of the west mesa as the area below the floor plain.

Q And below the escarpments?

THE COURT: No, he hasn't said that, Mr. Arkin. He has moved his pointer way to the west of the escarpment.That is why I asked the question again.

MR. ARKIN: I was trying to clarify it too, your Honor.

A Mesa is a general term that is used in New Mexico as regularly as plain.

THE COURT: For the jury, would you please put your pointer along the easterly boundary of the northwest mesa area.

THE WITNESS: All right.

THE COURT: What is the westerly boundary of what you call the northwest mesa?

THE WITNESS: The mesa area is this large expanse of land.

THE COURT: Okay. North of Central Avenue?

THE WITNESS: Essentially to the breaking point. This becomes another valley down in here, this is the Rio Puerco Valley. It is sort of delineated by the gas line.

THE COURT: On the west?

THE WITNESS: Yes, sir.

BY MR. ARKIN:

Q Do you know what the West Side Association is?

A Yes.

Q Have you ever been asked to do any reports by them, for that Association, rather?

A Yes.

Q When was that?

A Again it was when I was doing all of a group of reports on the west side, but it was early '63 or late '62.

MR. ARKIN: Mark this, Mr. Frezzo.

(Defendants Howard Friedman and Henry
xx Hoffman Exhibit KG marked for identification)

Q Can you identify KG?

A Yes, it is the study we did for the West

Side Association called the San Juan Basin Expressway.

Q When you say "we", who do you mean by that?

A Our firm, Yguado Association.

Q That is Jose Luis Yguado Associates?

A Yes.

MR. ARKIN: We offer it.

If there is any handwriting on that copy, Mr. Kaufman, we will have it deleted or excised.

MR. KAUFMAN: No objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit KG received in evidence)

xx

BY MR. ARKIN:

Q Mr. Yguado, speak up just a bit, would you?

A All right.

Q Sit back and speak up. We are about twenty-five feet apart or something like that. Okay.

Did this report which you did, I am now talking about the last marked in evidence, recommend the construction of any major new highways?

A Are you talking about --

MR. KAUFMAN: Your Honor, which report is he talking about?

Q I am talking about the San Juan Basin Expressway, which was just marked in evidence, referring to KG.

A Yes, that was the purpose of the report.

Q What highways?

A We proposed development of what was to be called the San Juan Expressway and that is a highway that would connect the Albuquerque metropolitan area with the Farmington, Astec, Bloomfield complex of communities in the northwest.

Q The Farmington, Astec, what?

A Bloomfield. There are three communities. Farmington is the largest in the northwest corner of New Mexico. The idea was essentially to connect Farmington and Albuquerque and open that area up.

Q Bloomfield is another one of those communities?

A Yes, sir.

Q Does the proposed road cross Rio Rancho?

A Yes, sir.

Q Why did you conclude in your report the new road was needed?

A Well, the report says it, but essentially what was happening was there was a great deal of traffic between Albuquerque as the major metropolitan area say in the state and Farmington, which was the major energy, gas, oil, in fact the road was going to follow the [illegible] line which connected Farmington to Albuquerque, so the idea was to connect the metropolitan area with its energy resource area.

Q What do you mean by "energy resource area"?

A Well, the northwest quadrant of New Mexico is where a substantial amount of oil, gas, coal, uranium, these kinds of minerals are developing and were developing back in '63, and there was a great deal of communication between the two communities, the two areas. There was an old road up above that was circuitous and very difficult to use and in view of the amount of traffic inter-connecting these areas it seemed reasonable to propose the development of an arterial road between the two communities.

Q Have you ever invested any money in land in the west side of Albuquerque?

A Yes.

Q When was that?

A I have difficulty with dates, but again I was doing this work for --

Q Roughly.

A Late '62, I would say.

Q Where was the land in which you invested located?

A It was called College Heights and it was next to Coors Road near the University of Albuquerque.

Q Do you want to show his Honor and the jury where that was on the map?

A Yes.

Q Use the pointer.

(Witness complies)

A Here's the University of Albuquerque right here, this little complex of buildings, and it was right in this area here (indicating). Right where Taylor Ranch is essentially now.

Q Did what you invested in have any particular name?

A It was called College Heights. We named it College Heights because of its relation to the university.

Q You baptized that land?

A Yes, sir. We bought it from Gil Taylor who the Taylor Ranch is named after.

MR. ARKIN: Okay, sit down.

Q How much money did you invest in the land and what kind of investment did you make, will you tell his Honor and the jury about that?

A Well, mine was small. I think I had 25 per cent interest in the purchase with three other people and our initial payment I think was $7,000 apiece.

Q That was a real estate syndicate so to speak?

A Yes, sir.

Q How many acres did you buy altogether, do you recall that?

A I think it was about 600 acres.

Q How much per acre?

A $1420 per acre.

Q How long did you maintain your investment?

A I just kept it for a year.

Q Did you sell it?

A The following year, yes.

Q How much did you receive on selling it?

A $15,000.

Q Do you have any idea now what the very same land which you bought for seven, sold for fifteen is now worth?

MR. KAUFMAN: Objection,your Honor.

THE COURT: Overruled. If he knows, he can answer.

A It's about 6,000 an acre.

Q The same acreage for which you paid 1400?

A Yes, sir.

Q Referring to the Prosecution Exhibit 316 in evidence, I am going to read a statement which appears, Mr. Kaufman, on 25602. It is also page 9.

MR. KAUFMAN: I have it.

MR. ARKIN: It is not page 9, then. Excuse me, do we have 316, the original copy?

MR. KAUFMAN: Do you want the copy that is in evidence?

MR. ARKIN: Sure. Do you want to read along with me or something?

MR. KAUFMAN: Okay.

Q I am reading what appears to be page 7, not page 9, but still 25602. Listen to the following quotation, Mr. Yguado.

"Albuquerque is bursting at the seams but the city is surrounded. Albuquerque's expansion is blocked on three sides by high mountain ranges and government reserve lands on which they cannot build. There is only one direction in which Albuquerque can expand, the northwest and that's precisely where Rio Rancho is located."

Is that a fair statement, Mr. Yguado?

A /Yes.

Q Now, referring to that same exhibit, at 25609, since you have the original, Mr. Kaufman, let's read it together again.

Let me ask you, Mr. Yguado, would this have been a fair statement, the one I just read, in 1966?

A Yes, it essentially reflects what I wrote in my report as well, so I agree.

Q With the same exhibit number, 316, referring to page 25607, the middle of the page: .

"Albuquerque is surrounded on three sides on which it cannot build. The city can only expand in one direction and that direction is squarely through Rio Rancho Estates. The city cannot expand beyond Rio Rancho Estates without first going through our property."

Is that a fair statement as of 1966?

A Without question, yes.

Q Now I am going to refer to Exhibit 315 at page 6 of that particular exhibit, Mr. Kaufman.

MR. ARKIN: Here is your exhibit back. Thank you very much.

Q Quoting: "The first three or four sentences of the first film are most important because they talk about Albuquerque being surrounded on three sides by either mountains" --

MS. HYNES: What is the page?

MR. ARKIN: That appears at 25585 or page 6, depending upon which code you are using.

Do you have it?

MR. KAUFMAN: Yes.

MR. ARKIN: Are you following me?

MR. KAUFMAN: Now I am, yes.

MR. ARKIN: Good. All right.

Q Quoting: "The first three or four sentences of the first film are most important because they talk about Albuquerque being surrounded on three sides by either mountains, Indian lands or federal properties."

They call it canyon lands, but do you want to stipulate that means Indian or do you want me to call it canyon lands, Mr. Kaufman?

MR. KAUFMAN: It says canyon lands and I -- I think we have to take it the way it is typed.

Q That is a typo, but it reads, "Canyon lands and federal properties. There is only one direction in which the city can grow, through the northwest mesa where Rio Rancho Estates is located. The city planners of Albuquerque gave an awful lot of attention to Rio Rancho Estates because this is where the city must grow to, grow into, grow out of."

Now, if you substitute the word Indian for canyon, is that a fair statement overall, Mr. Yguado?

A Well, I think I guess it is two statements. The comment about where growth is going to be with regard to the barriers I agree with totally.

Q Yes?

A I don't know what the planners are doing all the time so I don't know what they were doing then.

Q We can't really hear you.

A I beg your pardon?

Q It is hard to hear you.

THE COURT: You stopped in the middle of a sentence. Your voice trailed off.

A That is the acoustics, I guess.

Q You are saying the words in your throat.

A Essentially what I am saying is I agree with the comment with regard to the barriers and with regard to the growth of the northwest.

What specifically some of the planners were doing, you know, I don't know. I know they were aware of Rio Rancho but I don't know what they were doing.

Q Referring to that same exhibit, that is page 10, I am going to read the following, this is towards the bottom of the page, Mr. Kaufman, the bottom third.

"Hemmed in on three sides, only one direction the city can grow, right through Rio Rancho Estates."

A I agree.

Q Is that a fair statement?

A Yes, sir.

Q Now, I am goin gto read to you from Exhibit 388 at page 8.

MR. ARKIN: I have my copy if you will follow along with me. Okay.

Q Quoting from page 8 of 388 and I am excerpting, I am taking a portion of a sentence which appears there. It says: "The natural geography of the area makes it clear that this sunshine city's population can continue to explode in only one direction."

Is that fair to say in 1966?

A Yes, it goes on to say the northwest, yes.

Q If it means the northwest, it is fair to say?

A Yes.

Q Also on that same page appears the following, is this fair to say in 1966:

"According to experts, Albuquerque's future growth pattern is predetermined. It must take place towards the northwest and this is where most of the new growth activities are taking place."

Is that a fair statement?

A Yes.

Q You agree with it?

A Yes, sir.

Q In 1966, was it fair to state or accurate to state, rather, that new growth activities were taking place towards the northwest?

A Yes, I was working on a lot of the new growth activities. Yes, it was.

Q Describe those activities.

Well, we had master planned -- what new growth activities are essentially and the way it happens in Albuquerque is that people gather or large parcels of land and then they typically master plan these parcels and subdivide them.

At that time and before that time, there was substantial activity in the northwest quadrant with regard to buying land, subdividing land, master planning land, working to get roads and access developed, annexing to the city of Albuquerque, this kind of thing.

Those from my point of view are activities that reflect future development.

Q The northwest is where most of those new growth activities were taking place?

A Yes, sir.

Q Did you ever do any work for AMREP or Rio Rancho?

A Yes.

Q Aside from appearing here as an expert witness, when did you do work for Rio Rancho or AMREP?

A During 1963, I prepared a master plan for Rio Rancho Estates.

Q To cover what, sir?

A The 55,000 acres that they owned.

Q Did you prepare such a master plan?

A Pardon?

Q Did you prepare such a master plan?

A Yes.

Q Were you paid for your work?

A Yes.

Q Now, I am going to refer you to another exhibit in evidence and this refers to Exhibit 66, Mr. Kaufman, which is the Harman, O'Donnell & Henninger report. The one Mr. Avellanet prepared.

If you will open it to page 13. Are you ready?

MR. KAUFMAN: Oh, yes.

Q Okay. Reading from that page the following quotation:

"As crudely measured from the 1962 land use map, Albuquerque transportation study, underlined, (Wilbur Smith & Company) the topographic barriers east of the city and Indian and military reservations north and south of the city, land availability for urban development east of the Pan Am Freeway, I-25, approximates 48 square miles. About 42 square miles of unused land are north of the Coronado Freeway, I-40, and perhaps six square miles south of the highway.

"Assuming a modest development density of three dwelling units per acre and Albuquerque's 1960 average of 3.6 residents per dwelling, space in the northeast (and southeast) exists for about 365 persons."

THE COURT: What?

MR. ARKIN: 365,000. Did I say 365?

THE COURT: Yes.

THE WITNESS: That's not right.

Q That's good living. "365,000 persons or more than the expected Albuquerque population growth of roughly 300,000 persons by 1985."

Mr. Yguado, do you agree with that statement which I just read?

A No.

Q The statement says that there are 42 square miles of unused land north of I-40 and east of I-25. Can you tell me, based on your own analysis, how many square miles are in that area counting both used and unused land?

MR. KAUFMAN: Objection, your Honor. Number one, what analysis? Number two, what time frame are we talking about?

MR. ARKIN: I am talking about 1963 and I am talking about the analysis he did for me yesterday in my office.

MR. KAUFMAN: I think there ought to be some testimony about what the analysis was before he gives an opinion.

MR. ARKIN: Excuse me, then, I will rephrase the question, Mr. Kaufman, and you can object to that if you like.

Q As of now, right now, 1977, taking the area described in that report which I just read to you, how much land is there altogether, used and unused, geographically?

A 50 square miles.

Q How did you determine that?

THE COURT: Is that what we call the northeast area?

THE WITNESS: His description is north of Interstate 40 and east of Interstate 25.

THE COURT: That is what has been described to us as the northeast quadrant by everybody that has been here.

Do you agree with that description?

THE WITNESS: It depends if you use Central Avenue or Interstate 40.

THE COURT: Most of the people have been using the Santa Fe railroad tracks.

THE WITNESS: For the north/south.

The question is east/west.

THE COURT: The east/west they have been using I-40.

MR. ARKIN: I think a portion of that is in the southeast quadrant. I can have it cleared up.

THE WITNESS: The description that was read to me was east of Interstate 25 and north of Interstate 40, and that's the area that I am talking about.

THE COURT: Does that differ much from Central Avenue and the railroad tracks?

THE WITNESS: Not a great deal, but there is a difference.

THE COURT: There is a difference?

THE WITNESS: But that description was -- the railroad tracks are the same.

THE COURT: Central Avenue and I-40 are a little different?

THE WITNESS: Yes, sir.

I can point them out for you.

THE COURT: Could you?

THE WITNESS: Yes.

MR. ARKIN: Your Honor, can we have him define the Harman, O'Donnell & Henninger definition?

THE COURT: He is in the middle of doing something, Mr. Arkin.

MR. ARKIN: Okay. All right.

THE WITNESS: Essentially, this is Central Avenue coming through and traditionally the quadrants, the northeast and the southeast, have been divided by Central Avenue.

THE COURT: That's right. That is what we have been told.

THE WITNESS: Interstate 40 is this roadway here and there is some distance there.

Now, the description that was delineated that Mr. Arkin read and what I measured was north of Interstate 40 and east of Interstate 25, and that was the description Mr. Arkin read to me.

I measured up to the Sandia Indian pueblo and up to the 6200 level demarcation line.

THE COURT: And you say there are 50 square miles --

THE WITNESS: Totally?

THE COURT: Totally?

THE WITNESS: Yes, sir; everything.

THE COURT: All right.

Q What you are measuring there, I ask you, Mr. Yguado, is the land or the area defined in the report I just read to you, is that correct?

A Yes, sir.

Q You are taking the description as it appears in that quotation?

A Right.

Q Does that figure of 50 square miles which you just gave to me include North Albuquerque Acres?

A Yes.

Q And how large is the North Albuquerque Acres tract?

A It's about 7,000 acres or about 12 square miles.

Q So if you subtract the North Albuquerque Acres tract from the total you just gave me, what do you have left?

A 38 square miles.

Q Is it correct to say, then, that exclusive of North Albuquerque Acres, there are fewer than 42 square miles in the entire area, again, counting both used and unused land?

A There are 38.

Q And that is the area defined or set forth in that report, am I correct?

A Yes, sir.

Q Have you determined how much unused land -- I am not asking you not both but unused land -- existed east of I-25 and north of I-40?

A Yes.

Q About how much?

A About 25 square miles.

Q How did you determine --

A That is total land.

Q 25?

A Yes, sir.

Q How did you determine that?

THE COURT: Wait, wait. That changes your question, doesn't it?

Your question is unused.

MR. ARKIN: That's what I said.

THE COURT: He says this is total.

THE WITNESS: No, total unused.

THE COURT: Total unused?

THE WITNESS: Yes, sir.

THE COURT: Okay.

I think you better do a little recapitulation because I think the jury and the Judge are a little lost at this point.

Q Okay, let's start out again.

Let us take the area -- maybe you ought to stand by the map there and we will take you through your figures with the pointer and your calculations.

Okay. We are talking about that tract of land which is north of I-40 and east of I-25.

First define that.

THE COURT: He has done that. That is clear.

THE WITNESS: This is I-40 and this is I-25.

Q All right. And the top of that is the Sandia pueblo, am I correct?

A The Sandia Indian pueblo and the east is the 6200 elevation line which the city uses as a demarcation line.

Q Within that tract of land which was just described to you, how much is there total miles, used and unused?

A Total acreage within this area is 50 square miles, total.

Q Subtract from that the North Albuquerque Acres tract.

A Which is this area here and across to the interstate (indicating).

Q How much do you have left?

A It's about 12 square miles; 12.05.

Q So you have 38 square miles when you subtract the North Albuquerque tract, is that correct?

A Yes, sir. Yes, sir.

Q So that counting both used and unused land, as of 1963, you have fewer than 42 square miles, is that correct?

A Yes.

Well, he said 48 total.

I'm sorry.

THE COURT: What do you say? We will get to Avellanet in a minute.

A I have 38 square miles of total land, not counting Albuquerque Acres, used and unused.

THE COURT: All right.

The witness says there are 38 square miles of used and unused land within the defined boundary. That excludes 12 square miles attributable to North Albuquerque Acres.

MR. ARKIN: Okay.

Q How did you determine the amount of unused acreage as of 1963?

A The unused acreage?

Q Yes.

A Well, what I did, I had the total acreage and I took the 1963 existing land use plan that is included in the city planning reports, it's called 1985 land use plan, and I took their existing land use which delineates what is there then and I traced it onto a map and I measured that amount of land and I subtracted it from the total.

In other words, I got 7,834 acres of developed land within that area.

Q And in square miles?

A That is about 12.20 square miles.

Q Which leaves you about 26 unused, is that correct?

A Yes, sir, 25.93.

Q Of the approximately 26 square miles that were then unused in 1963, was all of that available for commercial or residential building development?

A No. That is total land.

Q That is gross land?

A That is gross land; arroyos, hills, available or not available, just total land.

Q Do you have an estimate of the amount of land which would be excluded from developable areas by reason of its being arroyos or other physical impediments?

A Well, not -- not a specific estimate of what would be excluded. I can only assume it would develop in a pattern that, you know, the rest of the heights would develop and it would have a comparable density.

Q Has there been development in that area of which we have been talking about between '63 and '66, or was there development between '63 and '66, 1963 and 1966?

A Sure.

Q Your testimony was that the vacant land in square miles in the northeast as of 1963, not including North Albuquerque Acres, was about 26, am I correct?

A Yes, sir.

Q The quotation I just read to you refers to six undeveloped square miles in the southeast.

Do you remember that?

A Yes, I remember your quote.

Q Have you been able to determine where those six square miles are?

A No, because the existing land use plan, you know, shows essentially the area developed. Then the military base, the air base is below, so I don't understand where those are.

Q You couldn't find those six square miles?

A Right.

Q What has the historical density of Albuquerque been, say, from 1963 up to the present time? Give me an average density.

A It's five people per acre.

Q What is the density now?

A [illegible].8.

Q Based upon the historical density which you just mentioned to me and using a figure -- excuse me one second.

Based upon the historical density figure you just gave me and also the amount of land, the 26 square miles which you spoke about in that area which you just delineated, together with the six square miles which you can't find, can you tell me, in your view, what the capacity population which is as of 1963 would have been on the east side of Albuquerque?

A I will need a little time now and go over it withyou, if I may.

Q Speak up a bit.

A You are talking about the 25 that I have indicated --

Q 26 plus or 25 plus.

A Okay. It's 26.

Q Plus the six.

A That would be 32 square miles of land times 640 acres per square mile.

Q Yes.

A I guess 20,480 acres.

If you multiply that times five, which is five persons per acre, you get 102,400 people.

Q The quotation I read to you suggested that somewhere in the neighborhood of 365,000 persons could fit into that area.

Is that true?

A No.

(Continued on next page.)

Q Is it untrue by a factor of over two and a half percent?

A Without question, yes.

Q Do you know what the population of Albuquerque was approximately in 1963?

A I would estimate about 250,000.

Q And for planning purposes in 1963, what was the population projection for the year 1985?

A The projection that was used for the various planning studies, the land use plan, the Wilbur Smith Transportation Study, were 825,000 persons.

Q Taking 1965 --

THE COURT: The land use plan was dated what, 1963?

THE WITNESS: 1963, and I think the Wilbur Smith was 1965, so in that area.

Q If the 102,000 people as of 1963 were moved into the area which we just discussed in the northeast part of Albuquerque, where would the balance of the projected population have to go, in your opinion?

A The northwest.

Q Would you like to point with the pointer on that mosaic where they would have to go on 1075?

A Well, if we can fit the 100,000 people in here, the balance of the people would have to go into this area (indicating).

Q Which includes Rio Rancho?

A Yes, sir.

Well, again, essentially, the gas line road, from here to the river, is my feeling (indicating).

Q Mr. Yguado, do you have an opinion as to the amount of growth Albuquerque will experience by the year 2000?

A Yes, I think so.

Q In terms of population, what is your opinion?

MR. KAUFMAN: Objection, your Honor. I don't think there has been any testimony about this man's expertise as to population.

THE COURT: I assume if you are an urban planner, you are qualified to give an opinion as to population growth. That is part of the essence of urban planning.

MR. KAUFMAN: I don't know that the witness has been qualified that way.

THE COURT: I have qualified him after listening to his qualifications, on direct examination, and you didn't object, that he was being qualified a an expert.

Q You can answer the question, Mr. Yguado.

A Well, I think in the next about 25 years, I think we are going to see a million people in the Albuquerque metropolitan area.

Q How do you reach that opinion?

A Well, I feel very strongly that there were projections made back in 1962 and 1963 when there was a substantial amount of growth in Albuquerque -- could I walk over here? -- based essentially on an employment center here, the military complexes and what have you that brought growth to the area (indicating).

I think for the late sixties there was a leveling off of government expenditure, there was a recessionary period and I think the growth leveled off like it did development-wise in much of the country.

I feel now, in the last two to three years, there is a whole realization that we are in an energy crisis in this country and most of our energy comes from out of the country.

It happens that New Mexico is one of the richest energy resources in the world.

MR. KAUFMAN: Your Honor, I object to this. We filed a brief on this and --

THE COURT: Overruled.

A And, quite frankly, I think they are revising their projections upwards, and I think presently there will be projections indicating substantial growth because people and industry goes where energy is.

We are talking energy such as solar, and there isn't any more energy but solar in New Mexico, and coal and gas deposits, and there are large gas and coal projections in the Farmington area are powering them, the oil and the gas.

Probably most importantly, this whole area here is full of uranium deposits and it is the largest uranium source today, in essence, this area right in here and, you know, along this gas line (indicating).

I think we have all the alternative energy sources that people are talking about and I think we are going to see substantial growth in that area.

In terms of living, you use less energy, actually, than, say, here.

So that's my --

Q Using less for heating, you mean?

A Yes.

THE COURT: What is the population of Albuquerque today? I know it is an estimate.

THE WITNESS: About 340,000, 350,000, in

the metropolitan area.

THE COURT: When you say the metropolitan area, does that include the whole Bernalillo County?

THE WITNESS: I think -- I don't have the exact current estimate, but I think it is about 350,000.

THE COURT: When you say metropolitan area, you mean Bernalillo County?

THE WITNESS: I say the Albuquerque metropolitan-not the entire county,the Albuquerque metropolitan area.

Sort of that green line that defines Albuquerque as well as the growth areas that will occur around them, those areas related to Albuquerque (indicating).

MR. ARKIN: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

XX BY MR. KAUFMAN:

Q Are you familiar with the Mid-Rio Grande Council of Governments, Mr. Yguado?

A Yes.

Q What is the function of the Mid-Rio Grande Council of Governments?

A Well, they are essentially a coordinating board for the various cities, towns, communities in the designated area, in the Council of Governments area --

which is what? A number of counties.

Q And they engage in planning and forecasting and coordinating communities, is that correct?

A They do.

It is my understanding most of their work is coordination for most of the planning for the region.

Q You say you expect a population in the city of Albuquerque to be one million by the year 2000?

A Yes, that is an approximate estimate, yes.

Q Are you aware that the Mid-Rio Grande Council of Governments has projected populations for the year 2000 for the whole of APJ-1 and none of those estimates reach a million?

A Well, most of APJ-1 with regard to population is Albuquerque.

Q And where does APJ-1 extend from and to?

A It includes -- I don't konw. It includes Sandoval County, it includes Bernalillo County, it includes Valencia County, it goes east, it includes Torres County and I think to the left -- no, it does not include Mackinney County. I think roughly those four counties.

In those four counties, approximately 99 percent of the population is in Albuquerque, I would guess.

Q So when you take into account one million people in Albuquerque, you are not taking into account growth at Rio Rancho, is that correct?

A Yes.

Q Oh, you are.

A I think -- when Albuquerque grows, I'm convinced that's how it is going to grow, into Rio Rancho.

Q You think Rio Rancho will be annexed into the city limits?

A I think that will be the city's decision and the residents of Rio Rancho.

One way or another, there is going to be a relationship, whether it be part of one city or whether there be a group of cities, like there are around New York, that interrelate one to the other. I don't know how it might come out.

THE COURT: So the jury can have an idea what you are talking about, Mr. Kaufman, you referred to projections by COG for the population in the year 2000.

What is their last figure?

MR. KAUFMAN: Your Honor, I am referring to Defendants Exhibit EG, which is a compilation of the number of projections for APJ-1. I will just read them down.

THE COURT: Give us the highest, because

your statement was none of them reached a million, so tell us the highest.

MR. KAUFMAN: The highest was 962,100, the lowest is 505,800.

THE COURT: Okay.

MR. KAUFMAN: I should say the lower projection is a more recent projection, it was in 1973, whereas the higher projection was in 1972.

THE COURT: One year made the difference of 400,000 people?

Go ahead, Mr. Kaufman.

MR. KAUFMAN: I ought to say, also, your Honor, that in 1976 --

THE COURT: All I was trying to find out was to clarify for the jury something that you left vague.

Your question to the witness was does he know that the highest projection in that document you have in your hand does not reach a million, so I asked you what the highest projection was; 962,000. You have answered my question.

Now the jury knows what your statement to the witness meant. It didn't know before I asked the question.

Q Mr. Yguado, did you know that in 1976 --

THE COURT: And I didn't know what the figure was going to be, Mr. Kaufman.

Q Mr. Yguado, did you know in 1976 -- withdrawn.

What is the BBER? Is that a branch of the University of New Mexico?

A I don't know what VBER stands for.

Q Excuse me?

A I don't know what VBER stands for.

Q BBER?

A I don't know.

Q Did you ever hear of the Bureau of I believe it is Business Research or Bureau of Business and Economic Research?

A BBR, Bureau of Business Reserach.

Q Were you aware that just last year in 1976 the BBR, University of New Mexico forecast a population of 704,700 for APJl in the year 2000?

A You are asking if I am aware?

Q Yes.

A No. They make sort of regular projections from year to year. I know they make some,but I don't know that specific one.

Q Mr. Yguado, you testified that you have a degree in landscape architecture, is that right?

A Yes, sir.

Q You have taken courses in urban planning?

A Yes, sir, graduate courses in planning.

Q Do you have a degree in urban planning?

A No, sir.

Q How long were you an employee of the Albuquerque Planning Department?

A Just short of a year, less than a year.

Q Did you work on the 1962 AMA x-ray and prognosis?

A Not specifically. I was aware of it, but I didn't have specific -- myself and George Carruthers worked in another department in essence. We were in a separate part.

Q Was the work that went into the AMA x-ray and prognosis being done while you were in the planning department?

A Yes.

Q I believe you testified you left the planning department in May of '62, was it, or '61?

A '61.

Q Why did you leave the planning department less than a year after you started?

A Well, I wanted to go to Albuquerque first and I couldn't afford to just go and lounge around so I went to work for the City of Albuquerque. Then I wanted to go into private practice and that is what I did.

Q Did you establish certain connections while you were in the Albuquerque Planning Department that enabled you to go into private practice?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Isn't it true, Mr. Yquado, that you were asked to leave the Albuquerque Planning Department?

A No, of course not.

Q Isn't it true that you were asked to leave because of a conflict of interest?

A No. I was never asked. I left the planning department because I chose to.

Q Was there any discussion prior to your leaving about whether or not you were soliciting business from developers who were making proposals to the Albuquerque Planning Department?

A I can remember discussion at one time that what happened essentially is that I was leaving the planning department and, in fact, the Snow people asked if I would consider doing some planning for them after I left. I can remember that another planner wanted to work for them and was upset when they decided to hire me.

Q Did you ever solicit business among developers who were making proposals to the Albuquerque Planning Department at the time you worked there?

A Of course not.

Q There was no discussion among you and your superiors at the Albuquerque Planning Department about any conflict of interest?

A I said there was just discussion and that is the extent of the discussion, what I just pointed out.

Q Were you asked to leave the Albuquerque Planning Department?

THE COURT: He has answered that before.

A I resigned.

Q You immediately then set up your private business; is that right?

A Yes, sir.

Q Who was your first client?

A I worked for several clients. I did a lot of work for Ed Snow, master planning, and I knew I was going to do it when I left the city, that is why I could afford to leave. Otherwise you don't leave a job without having something to go to and I did some work for Yanamoto who are development people in the North Valley, a Japanese family.

I would guess those two are probably my first clients. I am not sure in which order.

Q How soon after you left the planning department were you retained by Rio Rancho Estates?

A I guess I was retained by them in '63, approximately the first part of '63, and I left '61 so about a year and a half later.

Q Who retained you?

A I remember talking with Mr. Oberman and I.

don't remember who the director was.

Q Did you know Mr. Oberman from your days in the planning department?

A I had never met him.

Q Had Rio Rancho submitted any proposals to the planning department in 1961?

A Not that I was aware of.

Q I believe you testified that you had a job in 1962 concerning a joint venture with Harland Bartholmew Associates.

A Yes, I left the city employ and then I went back to work for the city and the county as a consultant.

Q This joint venture with Harland Bartholmew, for what type of work was that?

A Well, we did two studies. One of the studies was to develop a land use plan and a zoning plan and ordinance for all of Bernalillo County. That was the one study.

The second study was the conduct and prepare a parks and recreation development plan for Albuquerque and Bernalillo County.

So, Harland, Bartholmew and myself were directed to do this work.

Q Did you have a contract with the city or did Harland, Bartholmew?

A I don't remember how it was written specifically but it was a joint venture activity.

Q Again, the first report had to do with what, did you say, zoning?

A Zoning and land use, yes, sir.

Q Do you have a copy of that report?

A No, I don't. I have a preliminary copy, but I don't have it with me. It's a published document and it is public information.

Q That was a report that covered all of Bernalillo County, is that right?

A Yes, sir.

Q Whereas the reports that you have talked about here are reports that just covered the west side of Albuquerque, is that right?

A What reports do you mean?

Q Well, the San Juan Basic Expressway was about a road out the west side, right?

A That covered the northwest quadrant of New Mexico.

Q Right.

A Yes, sir.

Q EK was also a study of the northwest mesa area, is that right?

A Yes, sir.

Q KF was the condensation of that report, right?

A Yes.

Q This other report that you did, though, covered all of Bernalillo County, right, and all of Albuquerque?

A Yes.

Q You don't have a copy of that report here?

A Not with me, no. It was done for the city and county so it covered the entire area.

Q I just asked you if you brought a copy of that report here with you.

A No.

Q You testified that you did a lot of work on the west mesa area in the few years after you left the planning department; is that right?

A Yes.

Q That was '62, '63?

A Essentially, yes.

Q Did you do any work on the west mesa after that?

A Not -- no, not specifically that I can recall.

Q Have you done any work in Albuquerque in total regardless of quadrants since 1963 or '64?

A Oh, I did a subdivision in the Northeast Heights and I did a shopping center near Four Hills, but most -- what I am is a planning consultant to cities and towns. It happened that at that time we were hired by the city, you know, of Albuquerque to do a project.

Since then I have done projects for a lot of different cities. The City of Albuquerque essentially has its staff so we go out and do work for other cities and town. That is the nature of my business.

Q Mr. Yguado, what I am trying to get at is to find out how familiar you are with the City of Albuquerque since that is what you are testifying about here today and I am trying to find out how much work you have done in the city of Albuquerque since 1964.

A As a professional planner, I read many of the reports, I know many of the planners --

Q I am asking you what work have you done in the city of Albuquerque since 1964?

A I don't recollect. I worked on subdivisions in the east side. I don't remember the date exactly.

I did a shopping center development to the southeast in Four Hills and I don't remember the date of that. I imagine it was about '64 or '65. I don't remember exactly.

Q You don't live in Albuquerque, do you?

A No, sir.

Q You live twenty miles south of Albuquerque?

A Yes, south of the Isleta Indian Pueblo.

Q In the Indian Pueblo?

A South of the Pueblo. My office has been in Albuquerque, of course, you know all these years until about two years ago.

Q You said you did -- of the limited work that you did in Albuquerque, you said you did a subdivision in the Northeast section, is that right?

A That I recall, yes.

Q What subdivision was that?

A It's called the Sala Grande. It's on the corner of Commanche and Wyoming, I think.

Q Can you just point on the map where it is located?

A I am not sure I can find it. Let's see -- the tramway, I think it might be this quadrant of development right here for one.

Q Fronting on Montgomery?

A No, it was right here on Commanche.

MR. ARKIN: I can't see if you stand in front of it, Mr. Kaufman.

THE WITNESS: It's about here (indicating). It is the quadrant of land on Commanche and Candelaria.

Q Did you testify that you did some planning work with respect to shopping center feasibilities in '63 and '64?

A Yes. About that time.

Q Do you recall where they were located?

A The only one I can recall is that there was one south of Central and west of Four Hills and I did it for a developer by the name of Lee Hanish.

Q That is in the southeast section of Albuquerque?

A Yes.

Q Did you also do some shopping center work for a Viejo Land Company?

A Yes, I think that was where -- in the southwest of Albuquerque. We did a feasibility study for a shopping center.

Q That was in the southwest section, right?

A As I recall, yes.

Q Did you do a study for the Alpine Investment Company?

A Yes, I guess. I just don't remember who that is. The name sounds familiar. I have done a lot of work in fifteen years and I just don't remember every one I ever worked for.

Q You said you did work in 1963 for Edward Snow, is that right?

A Yes.

Q Was that a development called Snow Vista?

A Yes.

Q How big was Show Vista?

A I think about 3,000 acres.

Q What type of work did you do for Snow Vista?

A Land planning, preliminary resubdivisions.

Q Are you aware that Snow Vista is located on the Atrisco land grant?

A Yes.

Q You also said you did some work for G.W. Falls at Volcano Cliffs, is that right?

A Yes, sir.

Q What type of work did you do for Volcano Cliffs?

A Well, as I remember, we master planned this area called College Heights and we combined it with an area behind it that I think Albuquerque Gravel Products owned and some land of Falls and we asked the city to annex the property and we were working with them with regard to establishing I think a water trunk line and to annex that area into the city limits.

Q How big was Volcano Cliffs?

A The entire Volcano Cliffs I think is about -- I didn't master plan the entire thing, I did that particular piece of work -- I would guess about 5,000 acres. I am not sure.

Q Of that -- you say 5,000 acres?

A I am not sure. I really don't know. I am guessing.

Q Of the total acreage, how much of it is developed now, if you know?

A I don't know. Very little as far as I know, but I really don't know. I can't quantitatively answer that.

Q Do you know that Volcano Cliffs has been master planned for development both below and above the lava escarpment?

A Yes.

Q Did you do any planning work t Sandia Mountain in 1971?

A I am sorry, I don't know what you are alluding to, Sandia Mountain.

Q Do you recall working for an individual by the name of Mario Digern?

A Mario Digesin of Gott.

Q It is spelled differently here. Do you recall working on an enterprise called Sandia Frontier Lands?

A Yes, he had developed a small recreation, old time western town, stagecoach sort of complex and I master planned that for him.

Q Where was that located?

A That is -- it's a piece of land I think either leased or in the natural forest and I don't think it shows in here, but it is probably up in this area somewhere (indicating). It's a park and recreation kind of development.

Q It is east of the tramway?

A Yes, it's in the mountains. It's a mountain development. It's a recreation area in connection with the forest service.

Q While you are up, is there -- you mentioned that this area in here is the Cibola National Forest?

A Yes, sir.

Q Is there any development east of Cibola National Forest before you get out to what you said was the next valley?

A A very marginal, limited amount of mountain sort of development, recreation area.

Q There appears to be roads --

A There is.

Q -- in here and there appears to be development, is that the development you are talking about?

A I can't quite tell. It is Highway 10 that goes north and there are a few subdivisions. I say marginal because there is no water in the mountains or very limited water.

Q Mr. Yguado, you testified on direct that the only land that is available to accommodate development in the northeast section of Albuquerque at this time is I believe what you said, the spot that is open, referring to what you called the Simms property, is that correct?

A That portion of the Simms property, yes.

Q And from that -- from the Northeast Heights quadrant you eliminated reference to North Albuquerque Acres, is that right?

A Yes, I didn't feel that was developable.

Q Has there been any development on North Albuquerque Acres?

A The west side of it, yes.

Q Is there a subsidivion on North Albuquerque Acres called Loma del Norte?

A I believe so. I think Bellemah Corporation did a development.

Q Is there a development that is extending up the western portion of North Albuquerque Acres up toward the airport?

A Coronado Airport, yes, sir.

Q What reason do you give for the rest of North Albuquerque Acres not being developable?

A Well, there was a large piece right in the center there that was unplatted. It was a large piece that Bellemah developed and it didn't have all these little plats on it.

Q What is your reason --

A That is the reason thatcould be developed. My reason for the rest is that since 1961, I have known of developers in the city working to put together parts of North Albuquerque Acres, that has been for 15 years, and there has been very minimal progress in that area except for that first portion where Coronado Airport was. That was done a long time ago.

Those areas, you know, that could be gotten together, most of the owners apparently are out of state, 50 or 60 per cent of them.

Q Is that the reason that you attribute to the difficulty of developing North Albuquerque Acres because of the out-of-state ownership and small lots?

A That is one of the difficulties.

Q What are the other difficulties?

A Well, it's got a series of arroyos through there that you can't believe. Thunder Mountain is up here and all the way down and there is three or four major arroyos through that area.

Q Would I be pointing to them?

A Yes, sir. They are the subject of a very extensive drainage study done by the Albuquerque drainage department.

Q Do these arroyos that appear here make the land surrounding those arroyos totally unavailable for development?

A It depends on the nature of the arroyos. In some cases arroyos can be channeled, you know. In some areas arroyos sort of spread out and go into a flat plain and you may have a very flat plain, for example, and you may build a channel in which case you can carry the water and develop some of it so there are variations in the kind of arroyos and the configuration of the land, whether it can be developed or it can't and to what extent.

Q The arroyos that appear in North Albuquerque Acres at least on this map appear fainter than the arroyos that seem to be coursing through Rio Rancho Estates, is that right?

A I know and that's a problem because what happens there is that this area kind of levels out here. Like I said, you get down flatter it spreads out and you have a kind of flood plain there.

While these have a good gradient and they are indented and it is like a riverway rather than a fllod plain.

If you look out here in Snow Vista, much of that land I can remember when we platted it was very wide because the water sort of spread out and it was very difficult to control.

Q You would agree, Mr. Yguado, that all this -- the eastern part of Albuquerque at one point in time had arroyos running through it just as North Albuquerque Acres has arroyos running through it at this time?

A That's right.

Q Those arroyos didn't prevent the eastern part of Albuquerque from developing as we can see on this map?

A Well, what happened then is that the government -- what happened, if you want to know, is that they didn't give due consideration to necessary arroyos. The water would run out into the streets rather than go into the ground and every year in the Fall there was a flood here until about ten years ago they built for several million dollars a big north diversion channel so when this water came down this could carry it here and here into the river but it wasn't developed properly and for a long time there was concern about that.

Q What you are saying with the appropriate capital expense the problem of the arroyos can be overcome?

A It would have been a lot easier if they had done it right the first time. Not appropriate, with enough capital expense.

Q Either before or after you build your houses, but it would be easier to correct the problem before you put the development on, is that right?

A It would be more reasonable. The millions of dollars that they spent was just crazy and they had to do it because it was built.

Q What I am saying is you can make the capital expense before development goes onto North Albuquerque Acres and then these arroyos pose no problem for development?

A Except for that portion of the land they eliminated.

Q Yes, where the actual arroyos are?

A Yes, as I recall something like in North Albuquerque Acres there is a drainage study and something like seven or 800 acres of that area is in drainage trouble.

Q Those same arroyos exixt on Rio Rancho Estates, isn't that true?

A Yes, except Rio Rancho Estates platted and left openings where the arroyos are, but in North Albuquerque Acres you just have a grade pattern cutting over the arroyos.

Q You are saying that Rio Rancho Estates is not gridiron platting?

A I am saying they reflected the topography by virtue of planning around the arroyos and allowing, you know, rights of way for arroyos where obviously in North Albuquerque Acres it is just this square kind of platting without any awareness of the arroyos.

THE COURT: We will have a recess at this time.

(Jury left the courtroom.)

THE COURT: Aren't you aware that your own witness testified to the fact that North Albuquerque Acres was platted without regard to arroyos and that Rio Rancho was platted with regard to arroyos?

I assume it is to make it more efficient.

MR. KAUFMAN: I am not aware of the second half of what your Honor stated that our own witness testified that Rio Rancho was platted with regard to the arroyos.

THE COURT: Are you aware of the first?

MR. KAUFMAN: Yes.

THE COURT: I don't understand your question then.

MR. KAUFMAN: The question is to show there is no difference between North Albuquerque Acres and Rio Rancho.

THE COURT: It is your position that Rio Rancho was platted without regard to arroyos?

MR. KAUFMAN: To a certain extent, yes.

THE COURT: What about North Albuquerque Acres?

MR. KAUFMAN: Yes. I believe that is what the witnesses have testified to, yes.

THE COURT: There was no regard to the arroyo.

MR. KAUFMAN: Yes.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

THE COURT: You may proceed.

CROSS EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Yguado, are there utilities up to the boundaries of North Albuquerque Acres?

A In those areas that are developed nearby, yes, as far as I know.

Q There are utilities in Loma del Norte today?

A Sure.

Q And with respect to the development we can see on this map, I trust there are utilities in those areas as well, is that right?

A Yes.

There are certain areas that are platted that are not yet served with utilities.

Q And am I correct in stating, then, that excpet for the arroyos, the major stumbling block to developing North Albuquerque Acres was the fact of out-of-state ownership in small lots, is that right?

A Yes, I think so.

Q Mr. Arkin asked you what land was available for development in the southeast quadrant of the city as of today, and you said none.

Do you recall that?

A Yes. No substantial -- yes, yes.

Q I gather that you eliminated the acreage that is held by the state in trust for the University of New Mexico, is that right?

A Yes. That's south of the Tijeras Arroyo, yes.

Q Are you aware about two or three years ago that land, or at least 11,000 acres of that land, was proposed for development that would have 25,000 homes on it?

A I'm aware that the Bellemah Corporation made a proposal to the state and it was turned down.

Q Are you aware that they decided to keep that land in trust for the university?

A As far as I know.

Q But there is nothing that is stopping that land from eventually being developed, is there?

A Except that they just --

MR. ARKIN: Objection.

THE COURT: Sustained.

The state so far has prevented it from being developed.

Q And if and when the state decides to release it, it then becomes available for development, is that correct?

MR. ARKIN: Objection.

THE COURT: Sustained.

Nothing in this record gives any basis for an inference that the state is going to do it.

Q You testified on direct examination that in the northwest quadrant, six square miles were available for development. Is that right?

A I said -- yes. I think I said six to eight.

THE COURT: Within the county line.

Q Up to the Bernalillo County line, right?

A Yes.

THE COURT: Sandoval County line.

Q The Bernalillo-Sandoval County line?

A Right.

Q Referring to Exhibit EK, your preliminary analysis, "Growth and Development Study," that was done in 1963, right?

A Yes, the latter part of 1962.

Q Who hired you to do this?

A I did it for developers on the west side.

Q Which developers?

A I think at the same time that I did the master planning for College Heights and D.W. Falls, that whole complex of owners in that area.

Q And how much did those developers pay you to issue EK?

A I don't remember exactly. I would guess perpahs $3,000. I just don't remember exactly.

Q And at that time you stated that there were approximately 80 to 100 square miles in the northwest mesa area, isn't that right?

A At that time -- yes. That's what's in the report.

Q And you also stated that that vast land mass of the northwest mesa area is buildable and usable in almost its entirety.

Do you recall stating that?

A I recall that it's in there -- yes, it's in the report.

Q And are you now testifying that whereas in 1963 there were 80 to 100 square miles available for development, now in 1977 there is only six, six to eight?

A You want me to elaborate?

Q I want to know if that is your testimony.

A I'm not referring to the same area and the same circumstance.

Q When Mr. Arkin asked you to define the northwest mesa area, I believe you said west of the river down to that break line up to the county line?

A That's right.

Q And you outlined the portion west of the river, north of the interstate or Central Avenue out to this break line which you said was the next valley up to the county line?

A Yes. I didn't cut it off at the county line, I don't think.

Q Where did you cut it off?

A I didn't cut it off. That mesa goes all the way up.

Q So when you were referring to 80 to 100 square miles, how much up were you referring?

A In this report?

Q Yes.

A As I recall, in that report, it says northwest mesa area, but, in fact, it goes all the way -- it covers this mesa and it covers the Puerco valley all the way to the Rio Puerco River.

Q Is that how you defined it in here?

A That's how it was defined in that study.

Q It was defined northwest mesa area of the city of Albuquerque is defined as that area of land lying to the north of U.S. Highway 66, which is --

THE COURT: I-40.

MR. KAUFMAN: No, it's a little different, your Honor.

THE COURT: I thought it was the same.

MR. KAUFMAN: No. They are about a mile apart.

THE COURT: All right.

Q North of U.S. Highway 66, as far as the village of Corrales in Sandoval County.

That is right here, is that correct (indicating)?

A Yes.

Q So only as far north as Corrales.

And west from the westerly escarpment from the Rio Grande River, which is here, to the easterly half of the basin of the Rio Puerco River?

A Which is here (indicating).

Q Right into the Rio Puerco?

A The Rio Puerco.

This is the Puerco and this is the Puerco River valley.

Q You were saying in that area there was 80 to 100 square miles, almost all of it was available for development, is that right?

MR. ARKIN: If your Honor please, I should ask that the particular phrases Mr. Kaufman relies on be utilized. I don't think it says available for development, it says buildable.

MR. KAUFMAN: It says buildable and usable in almost its entirety.

MR. ARKIN: That is somewhat different, your Honor.

Q That is the statement you made in 1962 or 1963, is that right?

A Yes.

Q And now you are saying that there are only six to eight square miles?

A We aer not talking about the --

THE COURT: In a different area, Mr. Kaufman.

Q What area are you talking about, Mr. Yquado?

A I defined a large area that was defined in this report and it went from this river to the other river and it went from Central Avenue north.

Q When you --

A And that was 100 square miles of area.

Q When you talk about six to eight square miles, what area are you talking about?

A I am talking about this area that is developable from my point of view within this funnel below the escarpment and west of Coors Road. This strip in here is the area I am talking about (indicating).

Q But according to your report in 1963, considerably more land was buildable and usable, is that right?

A Buildable --

Q Is that right? Is that what you said in your report?

A That's what the report says, yes, sir.

Q And then you went on to detail all the different areas in that study area that were buildable and usable, is that right?

A I went on to detail the ownership -- the configuration of ownership in that area.

Q You had a map in that report that appears, which would be page 6 if it were numbered?

A Yes, sir.

Q And there are numbers on that map?

A Yes, sir.

Q That refer to different parcels of land?

A Ownership pattern, yes, sir. Not specific parcels, but general ownership configuration. It is a diagram.

Q The first one was legend item number 1, the Angel Ranch?

A Yes. That is in the Rio Puerco valley.

Q You say the Angel Ranch, 16,000 acres, including state and federal land, is properties in the ownership of substantial interests capable of large scale promotional sale or development.

Is that what you said in 1963?

A Yes.

Q Item number 2 was the Armijo properties.

They were also in the Rio Puerco basin, is that right?

A Yes.

Q And that was approximating 10,000 to 12,000 acres with certain portions now being subdivided and offered for sale, such as the 2,000 approximate acre Mesa Oesta subdivision shown as legend item number 3, and that would be in the southeasterly part of the Rio Puerco basin, is that right?

A Yes, sir.

Q Legend item number 4, which is east of the Rio Puerco basin north of Highway 66.

It says, "Common lands of the Atrisco grant, approximating 25,000 acres north of U.S. 66, extending from the Rio Puerco basin area to the St. Joseph-volcano area. This land is now under contract for surveying preliminary to master planning and development on a broad scale for industry and housing,"et cetera.

Is that what you said in 1963?

A Yes, sir.

MR. ARKIN: May we have the other copy, which is at Mr. Yguado's foot there, so we can follow it?

MR. KAUFMAN: Sure (handing).

MR. ARKIN: What page are you at, sir?

MR. KAUFMAN: Page 4.

Q Continuing to read, you then have, "Note: Not shown in this projection of the northwest mesa area is the Atrisco grant properties south of U.S. 66, approximating 25,000 acres. This portion of the Atrisco grant contains the 3500 acres Snow Vista subdivision, which has large areas now developed in housing."

Then your legend item number 5 was Rio Rancho Estates, which was formerly the Koontz Ranch, and you detail that as being 55,000 acres, 25 acres of this land have now been subdivided and are being offered for sale on a major nationwide sales campaign. Sales facilities in this promotion are being expended and a large recreation area is now being built.

Is that what you said in 1963?

A Yes, sir.

Q By the way, did you know how Rio Rancho sold its land nationwide?

A Not specifically.

(Continued on next page.)

Q Where did you get your information that the land was being offered for sale on a major nation-wide sales company?

A I was aware of it myself and the people in our office were aware of it.

Q You didn't talk to anybody from Rio Rancho about it?

A Not that I recall.

Q Then your legend Item No. 6 is the Alameda grant, originally 19,000 acres, more or less. This land is now the location of the Black Ranch, 11,000 acres and of Paradise Hills, a subdivision -- that is Item No. 7.

In project master plan for 8500 acres is now the location, and then you detail the different things that are present in Paradise Hills.

Your Item No. 8, which was Skyview Acres, was just south of the county line, is that right, relatively near the river?

A Yes.

Q Skyview Acres, 121 acres subdivision master plan for custom homes with a dozen or more units under construction and utilities, including a water line from the Paradise Hills area now installed.

You mentioned the Seven Bar Restaurant,

you mentioned --

A The Seven Bar Airport.

Q I'm sorry. Seven Bar Airport.

Item No. 10 was St. Joseph College.

Item No. 11, the Hughes Ranch.

No. 11 was just east of the --

MR. ARKIN: Are there any questions, your Honor? We will concede that the report says what it says.

THE COURT: Is this all one question?

MR. KAUFMAN: Your Honor, I am reading as to what he said about the development of this area in 1962 and 1963, and I am, as defense lawyers did, I am offering Mr. Yguado the chance whether or not I am reading his report accurately.

THE COURT: Defense counsel says that they will concede whatever is in the report is there.

MR. KAUFMAN: Then I will continue to read it just to the jury.

THE COURT: All right.

MR. KAUFMAN: Legend Item No. 11, here is the map. There is No. 11.

The Hughes Ranch, approximately 4,000 acres master planned and poised for imminent development.

Legend Item No. 12, Alpine Hills.

There is No. 12 (indicating).

A subdivision of approximately 640 acres.

Legend Item No. 13, the Taylor property. Approximately 650 acres now being master planned for future residential and commercial development.

Q Is that the same property that has just recently been called the Taylor Ranch and is being developed by Bellamah?

A It's the same property College Heights that I owned and part of which has been sold to the Taylor Ranch for development, yes.

Q The planning that was being done back in 1965, I gather that is not the same plan that is being put into effect now, is it?

A The 1963, master planned, annexed and provided for Montoya Road to that property. They master planned that and that's how it is going.

MR. KAUFMAN: Legend Item No. 14 is a parks and recreation area of the city of Albuquerque, approximating 1500 acres of land under lease from the federal government.

Legend Item No. 15, the Bond Ranch.

15 is out over here (indicating).

Approximately 10,000 acres of state, federal and deeded land held by substantial interests capable of broad-scale development or promotional sale.

Legend Item No. 16, Quaker Heights, a subdivision.

There is Quaker Heights (indicating).

Then, "Note: Number of property such as Quaker Heights occupy the close in area of St. Joseph College, each representing substantial tracts of land from 50 to 500 acres."

Q By the way, approximately how far is Quaker Heights from Rio Rancho Estates?

A I'd have to measure it on the map.

Q If I said about five or five and a quarter miles, would that be about accurate?

A Approximately. I would guess so.

Q Would it be at all accurate to say the Quaker Heights is just a few blocks from Rio Rancho Estates?

A Well, New Mexico blocks are very large.

Q So a few blocks would comprise five, five and a quarter miles?

A Obviously not.

Q Mr. Yquado, I am correct, am I not, that you detailed certain areas as buildable and usable in your 1963 report that have excluded from your consideration of six to eight square miles in 1976 as being available for development, is that right?

A We are talking about -- first we are talking about two different areas.

Q I know we are talking about two different areas and that is the point I am making.

You are excluding portions of the larger area that you excluded in 1963, am I right?

THE COURT: That he included.

Q That you included in 1963.

A Say it again. I'm sorry.

Q The six to eight square miles that you say is now available for development is in this portion here, right, this kind of triangular area (indicating)?

A Sort of. You said too far west.

Q You said the gas line road.

A And I said the escarpment, see it?

Q So we can't go west of the escarpment?

A Here is the escarpment. The land that you talked about the city owning is right here, and the state and federal land is in here (indicating).

The reason the city has bought that, their policy has been -- their policy is to buy this land up on the top of this lava flow and to retain growth and development this way rather than this way (indicating).

Q And you are not including the roads that have been braded through Volcano Cliffs which are on top of the lava escarpment, is that right?

A That's right.

Q You are not including --

A I don't --

Q Am I correct that you are not including the 16,000 acres of the Angel Ranch that you talked about in 1963?

A Well, including them in what? I don't understand what you are saying.

THE COURT: Including them in the area available for the development northwest of Albuquerque.

A No. I am talking about land that is developable now. In there I was talking about general ownership patterns upon which land, you know -- it is buildable, there is land there and you can build on it, but it is a different circumstance than land that is available for development.

THE COURT: What is the difference? I don't follow you.

THE WITNESS: Well, sir, what I was doing and showing is that onthe west mesa there was substantial large areas of ownership.

THE COURT: Let the jury hear, too.

THE WITNESS: Large areas of ownership, as opposed to the east side, for example, where most of the land was in very small bits and pieces.

My feeling was that because of this large ownership pattern, it was more conducive to development than some small bits and pieces on the east side, and essentially what I was delineating there was the ownership pattern.

For example, the Angel Ranch, a substantial part of that is federal and state land which I say and we all know that is not developable. But I was delineating the extent of the Angel Ranch.

I mentioned the Atrisco grant, which was a large parcel of land.

Q Mr. Yquado, you stated, Legend Item No. 1, the Angel Ranch, 16,000 acres, including state and federal land. This property is in the ownership of substantial interests capable of large scale promotional sale or development."

That is what you stated in your report, isn't it?

A But I don't feel it is developable.

Q Isn't that what you stated in your report?

You said it was capable of large scale promotional sale or development.

Is that what you said in your report?

A That's what the report says, yes, sir.

Q And you say that because some of it may be state or federal land, at least that portion of it is not available for development?

A Probably half of it is state and federal land for sure.

Q Are you aware of any federal land being sold in the Albuquerque land for development?

A No.

Q Do you know what --

A I know federal land being sold to the city for parks, but not for development. There may be some, but I don't know of any.

Q Mr. Yguado, aren't you aware that Rio Rancho Estates purchased land which was federal land which was called BLM land?

A No, I'm not.

Q Do you know what BLM is?

A Bureau of Land Management land.

Q And you are not aware that BLM land has been sold to developers?

A BLM land can't be sold. It's federal land by definition.

Q It can be exchanged for people who thereafter develop it, right?

A Not that I am aware.

Q So you are not aware that Rio Rancho Estates now owns what once was BLM land? Are you aware or unaware of that?

A I'm unaware. You just informed me.

THE COURT: He has not informed you.

THE WITNESS: That's what he said.

THE COURT: He said it, but that's not for the jury. It's got to be under oath.

THE WITNESS: Okay.

THE COURT: The jury understands the assertion of facts in questions are not evidence in this case.

Q Mr. Yguado, it was also your opinion in 1963 that the Armijo Properties, approximating 10,000 to 12,000 acres, had at least certain portions of it available for development and you stated certain portions now being subdivided and offered for sale, such as the 2,000 acre Mesa Oesta Subdivision, is that right?

A What's the question? That it says it?

Q In 1963 that was your opinion --

THE COURT: That that is not included in the six square miles you have been talking about.

THE WITNESS: No, because that area is in another river valley, it is way to the west of this northwest mesa area as it relates to the city of Albuquerque--

THE COURT: It is?

THE WITNESS: It is beyond the federal land that is in between, it is beyond the Alameda Grant. There is a large escarpment that goes down to it, and all I was delineating there was this was a large area and this was the characteristic in this area.

THE COURT: You say that could not be developed to take care of the projected increased population of Albuquerque?

THE WITNESS: I think it would be a lot harder to develop than this area that is developable here.

THE COURT: Why?

THE WITNESS: Well, for one thing, the land that he is alluding to is out here (indicating).

nd t

THE COURT: How far is that away from Albuquerque?

THE WITNESS: 25 miles perhaps. I would have to guess at about 25 miles.

He is talking -- this is the edge of the Rio Grande valley so there is a substantial break here. There is one road that comes out here that is Highway 66, the interstate road. There is a large block of city and state lands in this area so it's not as readily available, I don't know what the situation is in this valley at all with regard to availability of utilities.

In other words, when I delineated the ownership, I wasn't master planning it nor did I have all of the information.

I was saying here are the major ownerships.

THE COURT: All right; go ahead.

Q You said more than that. You said it was capable of large scale promotional sale or development.

A I said it was capable of large scale promotional sales.

Q Or development.

A I don't know what development can occur.

Q That's what you said in '63?

A Right.

Q Is that any further away from Albuquerque than the northwest portion of Rio Rancho Estates?

A It's further away, yes.

Q Do you know where the northwest portion of Rio Rancho Estates is? Up here?

A That's the extreme limit of it.

Q Yes, sir.

A It's further away than that. Not much further.

Q Moving a little closer into Albuquerque, you referred to legend item number 4 which you called the common lands of the Atrisco grant approximating 25,000 acres north of U.S. 66 extending from the Rio Puerco basin area to the St. Joseph-volcano area.

This land is now under contract for surveying, preliminary to master planning and development on a broad scale for industry, housing, et cetera.

That's what you said in 1963, is that right?

A Yes, sir.

Q The Atrisco grant was a lot closer to Albuquerque than the land you were just referring to in the Rio Puerco, is that correct?

A Yes, sir.

Q You also noted in that report that you were not even considering the portion of the Atrisco grant which was south of U.S. 66, is that right?

A The boundary definition said north.

Q That's right.

Are you aware that Paradise Hills is approximately 8,000 acres?

A Yes.

Q . Do you know about how many -- about what percentage of it is developed?

A No, not exactly or even -- no.

Q About 10 per cent?

A I can look at the map if you like.

Q Sure.

A Do you know the year of this map, by the way?

Q The year, 1975.

THE COURT: 1975.

A I would say in housing maybe half a section.

Q Half of one section is developed?

A Yes, it looks that way.

Q Do you know how many sections there are?

A In 8,000 acres?

Q Yes.

A Yes, 8,000 divided by 640. About 12.

Q You say of those 12, one-half of one is developed, is that what you are saying or one-half of the

12 square miles is developed?

A No, less than one section it looks to me is developed.

Q I am not sure what the word section means.

A 640 acres, one square mile is a section of land.

Q A section is one square mile?

A Yes, sir.

Q You are saying that one-half of one square mile is developed out of 12 square miles?

A About that.

Q So it is 1/24 of the property is developed?

A I guess so.

Q You stated that it was your opinion that as of now the direction of Albuquerque's growth was to the northwest, is that right?

A Yes, sir.

Q Are you saying that that is the only direction that Albuquerque is now growing?

A I said -- I indicated that in the Northeast Heights there was a piece of land there that was developable.

Q So as of today, January 7, 1977, Albuquerque can still grow to the northeast, is that right?

A To the extent that it would fill up that piece of land, yes, sir.

Q You said it's been -- withdrawn.

You said it has been your opinion that Albuquerque could grow only to the northwest since 1962-1963, is that right?

A Yes, sir.

Q I assume that when you say that that is with the caveat --

A The what?

Q The caveat.

A I don't know what that means.

Q I will withdraw it.

When you held that opinion in 1962 and 1963 that Albuquerque could only grow to the northwest, that assumed that, first, the land available in the northeast had to first be filled up, is that correct?

A It assumed that some of the land in the northeast would fill up along with some of the land on the west side.

Q But it was not true in 1962 or 1963 that Albuquerque at that time could only grow to the northwest, is that right?

A It depends on how you define growth, I guess. I need a definition of growth. If you mean three houses, it could go anywhere. If you mean the population projection, you know, 800,000 or 600,000 people, then it could only go to the northwest.

Q We are talking about 1962 or 1963?

A Yes, sir.

Q You had an opinion that Albuquerque could only grow to the northwest?

A Yes.

Q Now, in 1962 or 1963, that was not a true statement as of that date, was it, Albuquerque at that time could still grow in different directions, is that right?

A It was a true statement. What you are doing is quoting out of a report that showed a population projection and the population projection is a part of that report. It's the same population projection that the city was using at the time.

Based on thatpopulation projection that growth could only be achieved by going to the northwest. I felt that then and I feel it now.

Q Mr. Yguado, what I am saying is that you cannot accurately say that Albuquerque can grow in only one direction so long as there is available land for development in other directions, isn't that true?

A No, because you are not defining growth.

Q Mr. Yguado, without regard to a particular population projection, without regard to a population projection --

THE COURT: Wait.

MR. ARKIN: I object, your Honor.

THE COURT: Wait a minute. If your question is that when the witness made the statement in 1963, would it be fulfilled in 1964, the witness says obviously not.

Q It hasn't been fulfilled as of 1977, that is true, too, isn't it?

A Not totally, but in part.

Q Now, you based your opinion -- withdrawn.

Mr. Yguado, it is true, isn't it, that since 1962-1963 the majority of the absolute growth of Albuquerque has been in the northeast?

A Without question.

Q No doubt about that, is that right?

A That's right.

Q Yet I believe you testified that the statement that appears in Exhibit 388, and I will quote the statement: "And this is where most of the new growth activities" --

MR. ARKIN: Where are you reading from?

MR. KAUFMAN: Page 8 of Exhibit 388.

Q Referring to the northwest, the statement says:

"And this is where most of the new growth activities are taking place."

You said in your direct testimony that that was an accurate statement to have made in 1966.

A Absolutely. He said where most of the new growth activities were occurring.

Q And yet you have just testified that the majority of Albuquerque's growth has taken place in the northeast?

MR. ARKIN: Objection, argumentative, Judge.

THE COURT: I will let the witness answer it if he can.

A I don't understand it really.

Q Mr. Yguado, when you -- withdrawn.

When you have just testified that most of the growth in the last 15 years in Albuquerque has been in the northeast, by "most" I assume you are saying more growth in the northeast than in any other section, is that right?

A By that you are talking about the number of houses --

Q Mr. Yguado, answer the question.

A I am a planner.

THE COURT: He says you have got to define growth for him.

A I don't know what you are talking about.

Q By growth we are talking about --

THE COURT: You are. This is your definition of growth so that he can answer it yes or no or maybe.

Q Growth would be defined as increase in population, the attendant houses that go along with an increase in population and the attendant increase in commercial establishments that go along with population, actual, physical growth.

A You mean absolute rather than the rate of?

Q Absolute, right.

Now, you have testified that in the last 15 years most of the growth of Albuquerque has been in the northeast section of the city.

A In those terms, yes, sir.

Q You also stated that the following statement was an accurate statement to have made in 1966 and that statement was in reference to the northwest: "And this is where most of the new growth activities are taking place."

A Here you are talking about new growth activities. Those activities to me are putting land together, developing, master planning water and sewer lines, that is new growth, anticipating new growth in an area and that to me is the difference.

Q In terms of absolute growth, physical growth as we have just defined it, number of people, number of homes, number of physical establishments that actually exist, was it a true statement to have made in 1966 that the northwest was where most of the new growth activities were taking place?

MR. ARKIN: Objection, your Honor. Asked and answered.

MR. KAUFMAN: Not at all.

THE COURT: He has answered it from his understanding, but you may take it up on redirect.

Q The definition of growth that we just talked about, growth reflecting increased population, increased houses, increased commercial establishments that are attendant with growth, would it have been an accurate statement to make in 1966 that most of those growth activities were taking place in the northwest?

THE COURT: Wait, read it because that is where the witness disagrees with you. He says the language that was used there does not speak -- wait a second, this is the witness' statement -- the witness' statement is that the language used there is not talking about absolute growth.

MR. KAUFMAN: I will quote.

THE COURT: You are saying it does represent that.

Q I will quote, "And this is where most of the new growth activities are taking place."

THE COURT: New growth activities is the key from the witness' definition.

Q What do you say new growth activities means?

A I think I said, but I repeat: I think gathering land together, I think master planning land for development. I think preparation of subdivisions. I think preparation of annexations to the city. Development of master plans for water and sewer, these are the areas that people are going to move onto. These are the activities that take place to accommodate new growth. That is a different kind of activity than the building of houses.

Q Do you think that that is the only reasonable interpretation of that phrase that a lay person would attach to that phrase?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Yguado, don't you think it is reasonable for somebody who is not a planner when they read new growth activities to take that to mean increased population, increased houses, increased commercial establishments?

A I can't say what somebody else would think.

MR. ARKIN: Objection.

THE COURT: Objection sustained.

THE WITNESS: Sorry.

Q Mr. Yquado, it is true, is it not, that in 1966 most of the absolute actual physical growth that was taking place in Albuquerque was in the northeast section?

MR. ARKIN: Your Honor, this is the fifth time.

THE COURT: Sustained. He has answered that several times.

Q You know that the Volcano Cliffs section on the west side is approximately 4,000 acres?

A I said earlier I thought it might be about 5,000.

Q Do you know approximately how many homes exist at Volcano Cliffs?

A No, I don't.

Q Is it more than 5 per cent developed?

A I don't know.

Q Can you determine from looking at 1075-A, the map, approximately how much developed Volcano Cliffs is?

A In a general way I can.

Q Please do.

A I can't see it exactly, but I would guess there might be --

MR. ARKIN: If it's going to be a guess, if your

Honor please, I object to it.

A I can't tell. It is blurred and it is very small and I just can't tell.

Q Mr. Yquado, in your 1963 report you, stated that the city limits to the east have been expanded as far as possible to the Sandia foothills. Is that an accurate statement in 1963?

A Yes, I think they were then where they are now just about.

Q Let me show you what has been marked --

MR. ARKIN: What page are you reading from, Mr. Kaufman?

MR. KAUFMAN: I read from page EK, the city limits to the east have been expanded as far as possible to the Sandia foothills.

Q That's what you said in 1963, is that right?

A Yes.

Q The Sandia foothills commence somewhere to the east of Tramway Boulevard, is that right?

A I don't know that. No, I think they are in that area.

Q What is your definition of the Sandia foothills?

A Well, it is pretty hard to tell on this map. You know, when you talk in technical terms, see these large -- this is an alluvial fan right in here and this is the foothill and they extend out into here and out into here and out into this area, you know, so that becomes the foothills and it begins to go uphill.

MR. ARKIN: Mr. Yquado, you will have to keep your voice up.

THE WITNESS: I am sorry.

Q When you said that the city limits had been expanded as far as possible to the Sandia foothills, what was your definition of the Sandia foothills?

A Where the city limits were obviously.

Q Let me ask you this: When you said the city limits to the east have been expanded as far as possible to the Sandia foothills, were you saying that development had expanded as far as possible to the Sandia foothills?

A You just read it. I said the city limits.

Q So, in other words, when you made this report there was still room to expand eastward to the Sandia foothills, is that right?

MR. ARKIN: Objection, your Honor. What is Mr. Kaufman talking about, the city limits or something else?

THE COURT: Read the sentence, Mr. Kaufman.

Q The city limits to the east have been expanded as far as possible to the Sandia foothills.

A That was my feeling then and I think -- I don't think they have gone any further east.

Q What I am asking you though, Mr. Yquado, is whether or not development in 1963, physical houses had been expanded as far as the Sandia foothills.

THE COURT: That isn't what the sentence says. The sentence says the city limits.

MR. KAUFMAN: I understand that. I am now asking another question.

THE COURT: I don't gather that. I gather you are on the same topic because all your questions in the last three or four minutes have been about that sentence.

If you want to leave that sentence and go to something else, you may. Let the jury understand it.

I don't understand it and I gather they won't either.

Q Mr. Yquado, when you said in this report that the city limits have been expanded as far as possible to the Sandia foothills, you were not meaning by that that development had expanded as far as the Sandia foothills, is that right?

MR. ARKIN: Objection, your Honor.

THE COURT: He can ask the question in that way if he wants to.

A What I meant is that the city limits had expanded to the Sandia foothills. I meant exactly by that.

THE COURT: By city limits, do you mean the boundaries set by the city for its outer -- ,

THE WITNESS: The legal corporate limit.

THE COURT: All right.

Q Did you mean by that that development had expanded to the Sandia foothills?

A I wasn't speaking to development. I was speaking to the corporate city limits of Albuquerque.

THE COURT: He was speaking of the legal geographical limit.

Q As of 1963, then, there was still room for physical development to occur eastward toward the Sandia foothills, is that right?

MR. ARKIN: That has been asked about three and a half times.

MR. KAUFMAN: It hasn't been answered.

THE COURT: Overruled.

Q Is thatcorrect, Mr. Yquado?

A Say it again.

Q As of 1963 --

THE COURT: Was there room between the legal limits of thecity and the Sandia foothills for further development?

MR. KAUFMAN: That's not the question, your Honor.

THE COURT: It is not?

MR. KAUFMAN: No.

THE COURT: I think maybe we had better adjourn and think about it over the weekend because that's exactly what you were leading up to as far as the previous questions were concerned.

We will see you Monday morning at 10:00. Have a good weekend.

(Jury left the courtroom.)

MS. FYNES: Your Honor, with respect to Mr. Flatou, who is going to be testifying Monday, I had a conversation with Mr. Flatou and Mr. Flatou told me that he did studies for other developments in and around the Albuquerque area.

I asked him to forward pursuant to our subpoena copies of those studies to I might review them in preparation for cross examination.

Mr. Flatou forwarded material to me and pursuant to your Honor's order I turned it over to the defendants. That material was only sketches of material that he did for Rio Rancho and it did not include other reports that he had done in other projects in the Albuquerque area.

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We are asking the defendants to turn over to us all reports that Mr. Flatou did in connection with plans that he did in the Albuquerque area.

I understand that he has done substantial planning in the northeast section of Albuquerque. He has done substantial planning in the urban renewal section of the city of Albuquerque and the government is entitled to those reports in terms of cross examining Mr. Flatou and we have to date not received these reports and we are again at this situation where we are at a disadvantage in not having the opportunity, one, to even have the reports, and, two, to review the reports.

Mr. Flatou was given notice of that at least ten days ago. I spoke to him last weekend. I told him what I wanted and it has not been forthcoming. I haven't gotten it from the defendants.

We have a similar situation with Mr. Yguado on the stand testifying as to projects that he did and we don't have those reports and are hampered in our cross examination.

Mr. Yguado is now in New York. I would ask to have any reports that I could make available by Monday made available but certainly with respect to Mr. Flatou we want those reports and be in a position to review those reports so we can cross examine Mr. Flatou.

There was extensive reports made available to the defense in connection with the government witnesses. We want the opportunity to effectively cross examine these experts.

MR. ARKIN: If your Honor please, we didn't obtain, for example, the various reports done by Harman, O'Donnell & Henninger in the Albuquerque area.

The point is these people are in the planning business and they may have done other reports. Anything we rely upon, anything they will testify in respect to are based upon we will give to Ms. Hynes.

I don't have anything which I have not given to Ms. Hynes. It is as simple as that. With respect to what Mr. Flatou may or may not have said to her, I don't know. I am not going to ask Mr. Flatou to testify in respect to any reports he may have done in his 48 years of being a planner in Albuquerque. I am just not. He is called for a limited purpose. He will testify to any documents, anything at all on which he bases his testimony on, they can have.

I will even give them copies.

MS. HYNES: Mr. Arkin may not want to talk about the planning that Mr. Flatou did in the northeast and that's understandable and it may not be something he relies upon in his specific answers to Mr. Arkin's questions, but it is certainly something that the government is interested in in terms of cross examination.

THE COURT: That's not Mr. Arkin's responsibility.

MS. HYNES: We have a subpoena outstanding that was served upon Mr. Flatou and it has not been complied with.

THE COURT: Mr. Flatou is not here so what do you want me to do?

MS. HYNES: I don't want him to testify until the subpoena is complied with and the government has an opportunity to look at those documents.

MR. ARKIN: That's the same subpoena, your Honor, Ms. Thompson tells me, I have seen the rider on it which would call for Mr. Flatou to take his one-story sprawling building in Albuquerque and bring it to the court. The man has been in business for a lot of years. He has been obviously doing planning in Albuquerque for many, many years and when you have a subpoena which calls for everything but the kitchen sink, what can the man do?

He did bundle up piles of papers which Ms. Hynes said to me were too much for an ordinary mortal to carry back. Therefore, we sent a mere mortal to carry half

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of the documents to the office.

What more can the man do?

(Continued on next page.)

MS. HYNES: I can tell you, your Honor. I had a conversation with Mr. Flatou. We reviewed what he had in his office, what kind of reports he had, and at the end of the conversation it was agreed that Mr. Flatou -- and these reports are not voluminous, they are very specific reports that we talked about -- that those reports, it was my understanding, would be forthcoming.

We are probably talking about a pile of documents that may be two inches high.

I eliminated in the discussion almost all of the items called for in the subpoena.

As a matter of fact --

THE COURT: Where is Mr. Flatou?

MR. ARKIN: He is in Albuquerque. He is coming in on Sunday.

THE COURT: So call him up, Ms. Hynes, and tell him to bring those specific documents that you are talking about, which are two inches high.

MR. ARKIN: If Ms. Hynes will give us a list of the specific documents she wants --

THE COURT: She says she has specific documents that she spoke to Mr. Flatou about and they are two inches high.

MR. ARKIN: If she gives me a list of documents, your Honor, which are two inches high, I will, in the interest of justice, I will make sure that Mr. Flatou knows about that and I will make sure if Mr. Flatou has them he will bring them in.

THE COURT: All right.

(Adjournment taken to Monday, January 10, 1977, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Hugh J. Graham			6742	
Ruth V. Mellenbrook	6744	6776		
Jose Luis Yguado	6788	6854		

EXHIBIT INDEX

Defendant Howard Friedman and Henry Hoffman	Identification	In Evidence
KE	6770	6770
EK		6818
KF	6820	6822
KG	6825	6826

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 10, 1977
10:00 a.m.

(Trial continued.)

(In open court in the absence of the jury.)

MR. ARKIN: Your Honor, I have two statements to maek to the court, as I said I would, one of which I said I would last Friday and another one which I will relate afterwards.

First, we have determined over the weekend that we will not call any of the defendants as witnesses. I told your Honor I would tell you this morning and I am now.

Secondly, if your Honor please, we have determined not to call our appraiser Richard Godfrey as a witness and I wish your Honor would indulge me one moment so I can explain now.

Mr. Flatou was somebody we retained in May or June of last year. He is a widely regarded appraiser in the Albuquerque area -- Mr. Godfrey, rather. What did I say, Flatou?

Richard Godfrey.

We brought him in this weekend and in the course of my preparation I determined that his appraisal of some $5,000 per acre as a value of Rio Rancho land was based in large part upon information provided him by my office.

My office had been doing various verification work throughout the country in terms of resales. We came up with a lot of information which we forwarded to Mr. Godfrey.

The understanding and instruction was that he would independently verify what my office had done. I learned this weekend he had not done that, contrary to my instructions.

Accordingly, I am not going to put him on the stand because while I believe in the accuracy of my office's verification, that is me and not Mr. Godfrey, and so if your Honor please, I for some reason which your Honor can understand, I am not terribly happy about that, I will not put him on the stand.

THE COURT: That leaves Mr. Flatou?

MR. ARKIN: Mr. Flatou at this present time is in the city, he got in very late last night because of the storm, and Mr. Fleming, my friend, is now talking to Mr. Flatou.

We will alert your Honor promptly as to our disposition in that regard.

We now have Mr. Yguado, who is here, and in addition we have two computer witnesses, and we will have a number of documents, a very brief number of documents, to read to the jury, that is, documents we want to get into, document completeness and so forth that we spoke about.

With that, I think we will rest.

THE COURT: When do you think that will occur?

MR. ARKIN: It could very well be this afternoon.

THE COURT: What does the government have for rebuttal?

MS. HYNES: Your Honor, we have certain subpoenas outstanding right now for the company we haven't gotten a response on yet.

We haven't made a determination yet whether, once we get those documents, we will require calling any witnesses.

We do have one matter to take up with the court, however.

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THE COURT: Wait. Let's finish this first. Let's not step away from it.

You say you are waiting for documents from the corporations?

MS. HYNES: Yes, that's correct.

THE COURT: What are you waiting for?

Ms. Dacey is right there. Let's find out why you haven't had it. She has been taking care of these.

Haven't you?

MS. DACEY: Yes.

As I told Ms. Hynes this morning, she has subpoenaed documents on three individuals.

One set of documents on one individual was to be in this morning. It had not arrived when I left my office. As soon as it comes in someone will bring it down to court.

On one other individual, they do not own any land at Rio Rancho.

And on one other, we are still checking, but we can't find any documents on the person or any evidence that they ever owned any land, but we are still checking that.

THE COURT: Now let us have the names so I know what you are talking about.

MS. HYNES: One is Pastor Schliebe, your Honor.

You will recall that there was testimony --

THE COURT: I know all about Pastor Schliebe.

Is Pastor Schliebe the one you have --

MS. DACEY: We do have documents on Pastor Schliebe and they should be in -- I was told they would be here this morning, but they are not here yet.

Then Reverend Rupley does not own any land at Rio Rancho, never did.

MR. ARKIN: He never testified that he did.

MS. DACEY: And the third individual was Mr. and Mrs. George Caste.

MS. HYNES: Yes. The name in the record appears as C-a-s-t-e.

This was an individual who sold their house to one of the defendant's witnesses.

THE COURT: Caste. I heard that name.

MS. DACEY: And they have found no evidence that this person owned land at Rio Rancho, but they are still checking, going backwards from the person who owned the house.

MR. ARKIN: No evidence -- we have the computer and if you don't have the right spelling, obviously it is difficult to retrieve that out of a computer, and so we cannot say that he never had any land, he was not a customer. We don't know whether the spelling was right, whether it was taken down phonetically or whatever, but we are making a search for that person's records or fiche, as they call it.

THE COURT: All right. What else, Ms. Hynes, are you looking for from the defendants?

MS. HYNES: Your Honor, those are the only documents.

MR. KAUFMAN: Your Honor --

THE COURT: Wait. Let Ms. Hynes finish.

MR. KAUFMAN: It is another document that I am familiar with.

Mr. Yguado testified about the two reports he did in conjunction with Harland Bartholomew, I believe, back in 1963 for the city. One was a park and recreation study, the second one was a zoning study, both for Bernalillo County.

Mr. Yguado had testified on Friday that he did not have those reports with him.

Over the weekend, Ms. Thompson provided us with the parks and recreation study. She said they did not have the zoning study.

I told her yesterday that we did want it, and I believe she said they would try to make efforts to get it, but they doubted it would be here today since it was probably in Albuquerque.

We do need that document, though, your Honor, and to the extent that it will not get here until tomorrow, we would ask that Mr. Yguado be held over until we receive that report in the eventuality we may need to ask him questions about it.

(Continued on next page.)

THE COURT: Anything else?

MS. HYNES: Yes, your Honor.

THE COURT: In the way of documents?

MS. HYNES: Yes, your Honor.

One, Mr. Flatow, I had a conversation with Mr. Flatow after we left court and I again asked Mr. Flatow about reports that he had done.

In our previous conversation he said that he believed there were reports and that he would have to double-check.

When I got back to him after court on Friday, he said he had not made any effort to go through his files and still did not know whether he had any reports and that he said that he would do that.

I reminded him that he was under subpoena, and he said that he did have a list of all projects that he had worked on in Albuquerque and he expected that he -- he said that he would bring that list with him to New York, and I reminded him that he had to bring any reports.

Now, I have not received the list. I understand Mr. Flatow arrived sometime late last night. I have not received a list from the defendants this morning that Mr. Flatow said he was bringing to New York, nor have I received any documents.

I was advised by defense counsel yesterday that Mr. Flatow is being called as a witness to give population projections and the direction of growth of Albuquerque.

Mr. Flatow is an architect and engineer. We would have a voir dire on whether he is a population expert and somebody who predicts population.

I was advised by Ms. Thompson that in his testimony on projecting population, he is not relying on any studies, therefore, if he is not relying upon any studies, this must be something that he himself has done on the basis of raw data or some kind of basis for his population projections other than a layman's opinion or an architect's opinion or an engineer's opinion.

That being the case, we have not received any documents with respect to Mr. Flatow. We have been advised that none are forthcoming.

My application with respect to Mr. Flatow is that being the case, he cannot be put on the stand today and, two, when he is put on the stand, I would ask that if the defendants are, indeed, trying to qualify Mr. Flatow as a population expert, that we would have extensive voir dire on his qualifications to project population.

The second matter, your Honor, is that Mr.

Arkin, again, made reference this morning to computer documents that he wishes to put into evidence.

We have not, to this moment, seen those documents. They were not produced pursuant to your Honor's discovery order.

The discovery of the defendants for any documents that they were introducing in their case in chief was supposed to be completed one week prior to trial. We have not received that document.

Under the rules, where there has been failure to comply with a discovery order, the Court has two options:

It can either exclude the documents or it can grant a continuance to provide the government or whatever party an opportunity to review those documents.

Since these are computer printouts, I don't know what is in a computer printout, I don't know what kind of examination the government will have to make of those documents.

Our application would be, one, since they were not produced pursuant to your Honor's discovery order that they be excluded, and that no testimony be taken on those computer documents because they were not produced for discovery.

In the alternative, the application would be, one, obviously to have them produced as soon as possible and, two, for a continuance until the government can determine what it is and what kind of time is needed to examine these documents.

MR. ARKIN: May I respond, your Honor?

THE COURT: Yes.

MR. ARKIN: Let me respond, first, about Mr. Flatow.

Mr. Flatow is a renowned planner and whatever voir dire, extensive or not extensive, Ms. Hynes would wish to have with respect to his qualifications, I'm sure the Court would be satisfied.

However, in respect to Mr. Flatow's list of documents, let me review the bidding.

On Friday last when we spoke about that, it was my very clear understanding that Ms. Hynes would provide Ms. Thompson or somebody from the defense with a list of that two inch stack of documents which she said she knew existed and we would endeavor to obtain them.

Now, I learned from Ms. Thompson that list was never provided by Ms. Hynes and now I learned from Ms. Hynes and I learned indirectly from Ms. Thompson Ms. Hynes called my expert, Mr. Flatow.

I believe I made it clear to the Court that we didn't wish to have Ms. Hynes call our experts because our experts had been working with the defense, and I must say that any discovery which Ms. Hynes wanted should certainly have been routed to me or somebody on the defense. We have a number of people here. She should not have called Mr. Flatow.

Because she called Mr. Flatow, Ms. Thompson apparently did not or she was waiting for Ms. Hynes' list. That's where we now stand.

Mr. Flatow is in town. Whether he has that list, whether he has other documents, I don't know of my own knowledge right now. He is being prepared and spoken to by Mr. Fleming and Ms. Thompson.

Whatever he has with him we will certainly produce. But I must say that, again --

THE COURT: At the session on Friday, Ms. Hynes, I thought I directed you to give this list of the two inch stack of documents which you knew existed.

MS. HYNES: Your Honor, I was relying upon Mr. Flatow's statements to me that he believed there were reports.

I went back to Mr. Flatow -- this relates to reports he did in other areas of Albuquerque.

THE COURT: I know.

MS. HYNES: I went back to verify that he had those reports so I could give that list, because at the time Mr. Flatow stated to me that he believed that he did have reports, but he was going to check it, and I was assuming that he was checking it.

I went back to get a precise list, and he still had not checked it.

I called Ms. Thompson and said, "The witness still had not checked his files, that he was unable to give me a definite answer as to whether there was a report and that he did say that he had a list of all projects that he worked on."

And Ms. Thompson and I agreed when he brought in the list of projects that we would receive that list and also that the witness had been directed to bring any reports that he did on any of those projects if the reports existed.

But Mr. Flatow is unable to verify to me whether the reports existed. In the first conversation he said he believed they did.

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THE COURT: The conversation here in court on Friday on page 6922 indicates, this is you speaking, line 6:

"They are very specific reports that we talked about."

Then I ended up on line 22 saying:

"She" meaning you, Ms. Hynes, "says she has specific documents that she spoke to Mr. Flatow about and they are two inches high.

"Mr. Arkin: If she gives me a list of documents, your Honor, which are two inches high, I will in the interests of justice make sure that Mr. Flatow knows about that and I will make sure, if Mr. Flatow has them, he will bring them in.

"The Court: All right.

"Adjourned."

So, as I read this, you had specific documents in mind. They were two inches high and I told you to give a list to Mr. Arkin and he would say that he brought them in. That is what the record shows.

MS. HYNES: The record also says that Court is saying at line 17: "Call him up, Ms. Hynes."

THE COURT: That is right, that is line 17, I am talking about line 22, after that, Ms. Hyn

MS. HYNES: The situation is what I have just described to you, your Honor.

THE COURT: Did you give Mr. Arkin a list of the reports that you had specifically in mind which you say you had?

MS. HYNES: No.

THE COURT: You didn't give it to him. If you want them produced, give him a list of those specific reports which you say you had in mind.

MS. HYNES: Until I can get Mr.Flatow -- Mr. Flatow is the one who is giving me the information and he told me that he believed he had a report --

THE COURT: The record shows that you had specific reports in mind. So tell us what the specific reports are.

MS. HYNES: A report with respect to his planning on the central district, the convention center and an urban renewal plan that he did in the central area of the city.

THE COURT: Those three, right?

MS. HYNES: That is one project, I am not sure what the term of art is.

THE COURT: What else?

MS. HYNES: A project he did for Volcano

Cliffs. A project he did in North Albuquerque Acres.

The witness also said he did various planning in other parts of the city and wasn't sure whether he had reports.

What I was talking about in terms of eliminating a lot of detail was that I told the witness I was only interested in projects that were completed in a report form. I didn't want him to bring in all of his sketches and drawings of the various projects and Mr. Flatow responded that if that was the case, then that eliminated pretty much all of the material that was covered by the subpoena because the majority of that material wasn't in form --

THE COURT: And he has these specific reports that you have just listed.

MS. HYNES: There may be others listed in the list that was to be provided to me this morning.

THE COURT: I am talking about what you said you had which you would provide to Mr. Arkin on Friday.

You have first given it to him now, all right. We will have to wait until Mr. Flatow arrives.

MR. ARKIN: May I ask, your Honor, that in view of the fact that he is a defense expert, I thought we had discussed this and my friend Sprizzo made it very clear what his view of the law was, and I have come to agree with him, that defense experts should not be spoken to by the prosecution which is why I said, "In the interest of justice," I said I would make sure he would bring in whatever he had if I was told on Friday.

THE COURT: You have been told about it now. See if he has it. If he doesn't have it, it is just too bad.

MS. HYNES: With respect to Mr. Flatow's qualifications as a planner, the testimony has been through Mr. Carruthers, who was head of the planning department in Albuquerque, that the planning department itself does not do population projections, but has a contract --

THE COURT: Ms. Hynes, I am not interested in going over Mr. Flatow's qualifications until he is here under oath on the stand and he tells us what his qualifications are.

MS. HYNES: I understand that, your Honor. I just want to make one statement and that is the fact that you are a planner does not make you a demographer --

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THE COURT: I will make the ruling at the time. I am perfectly qualified to determine whether the man is an expert or not after hearing him tell me what his qualifications are.

MR. ARKIN: May I respond to the other pillar of Ms. Hynes' requests, which had to do with her computer printouts.

She said to your Honor that two of the computer printouts, I understand, were generated on January 7, 1977.

Secondly, I should remind your Honor, though I am sure your Honor does not need reminding, that throughout this trial there were a variety of documents that the prosecution adduced and introduced, in fact, which were not on our list of documents. Before we put the computer people on the stnad, I will see to it, and it is not so voluminous that in a few moments they couldn't go through it, we will give those documents to the prosecution. The reason they didn't get the documents before is because with respect to the ones which were made up on January 7th, we just didn't have them. We flew them in last night.

Again, it seems to me that the complaint here is not one which Ms. Hynes has real standing to make in view of what has happened in the past two and a half months in this case.

THE COURT: Do you have all the documents available now that will be referred to by your so-called computer people?

MR. ARKIN: Ms. Cross will address the court.

THE COURT: Hand them over to the government now.

MS. CROSS: Yes, I have them in the back room if one of the assistants wants them. There are only about four of them.

THE COURT: Which one will go do that?

Mr. Devorkin.

MR. DEVORKIN: I take it we can make copies of those documents or, if there are copies, I will just take copies.

THE COURT: Go take a look.

MR. ARKIN: I understand there is a juror missing, your Honor.

THE COURT: We haven't checked.

With this state of affairs, it looks to me that I have to move up the date that I fixed for submission of requests to charge.

MR. ARKIN: Yes, your Honor.

THE COURT: I had better have them by Thursday if you want rulings before summations start.

MR. ARKIN: My friend Sprizzo is nodding his head so we will do it. If your Honor orders us to do it, we will do it.

THE COURT: If you want a charge in which I will rule on your requests, you had better do it. Judge Friendly has said that if you don't put them in before the charge, the court doesn't have to give them or consider them or look at them and I strictly adhere to Judge Friendly's direction.

MR. ARKIN: And I strictly adhere to your Honor's. We will get them in.

MR. SPRIZZO: I don't think that will be a problem because we were anticipating a longer defense and we will now be free to do something else.

MR. KAUFMAN: Your Honor, one other matter. On Friday when Mr. Yguado was on the stand I had been asking him about his knowledge of COG's population projections, and then your Honor questioned me and you asked me about the highest of the population projections and I said 962,000 and I gave a date of 1972 for that.

THE COURT: I thought it was '73, but it makes no difference.

MR. KAUFMAN: I misread, your Honor, according to the document that was the 1967 prediction and I would like to correct that in front of the jury.

THE COURT: You may.

All right, let's just have a short recess.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

XXX JOSE LUIS YGUADO, resumed.

THE CLERK: The court wishes to inform you that you are still under oath.

THE COURT: You may proceed.

XXX CROSS EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Yguado, on Friday you testified that you projected a population of 1 million by the year 2000.

Do you recall that?

A Yes, sir.

Q What studies didyou rely on to reach that opinion about 1 million people by the year 2000?

A I didn't do a detailed study, I --

Q Did you rely on any other studies?

A I relied on my general knowledge of Albuquerque and growth and energy. It was an opinion based on general knowledge.

Q Did you rely on any population studies?

A That are -- specific studies?

Q Yes.

A No. That was my opinion based on what I know.

Q What is demography?

A Demography is study and analysis of population,

population trends, very often involved with census analysis, breakdown of population and what have you.

Q And what is your training in demography?

A I have studied demography with a man by the name of Williams, who is a demographer, out of Berkeley -- he is a sociologist-demographer -- and I have had several courses in sociology and demography.

Q And when city planners make population or demographic projections, isn't it true that they, in the Albuquerque area, rely on population projections of population experts?

A It depends on the city planner, I guess. I don't know who you are speaking of.

Q Do you consider yourself a population expert?

A I consider myself competent in the area and I've used people to conduct studies and I have done some on my own.

Q Are you aware that when the Albuquerque city planning department produced its AMA X-ray report in 1962 and its land use plan in 1985 that it used population experts for its source of population projections and did not make its own population projections?

MR. ARKIN: Objection.

THE COURT: I don't know what they used. Whatever they used they used. But I won't accept the rule that only a population expert per se is competent to make a projection.

Sociologists are competent to make projections. They do it every day in the area of demography.

Q Did the Albuquerque planning department, in connection with its reports in 1962 and 1964, make its own population projections?

MR. ARKIN: Objection.

THE COURT: I will let that in for what it's worth.

A To the best of my knowledge, they used Jerry Brasher to do an analysis and to prepare a population projection.

Q And when you produced Defendants' Exhibit EK, which is your growth and development study of the northwest mesa, you relied on Mr. Brasher's population projections as well, isn't that true?

A That's correct.

Q In connection, though, with your opinion as to 1 million people by the year 2000, am I correct in stating that you have not relied on any other population projections?

A That's correct.

MR. KAUFMAN: Your Honor, at this time I would like to correct what I read on Friday with respect to the COG projections. When your Honor asked me about the projection for APJ-1 of 962,000, I at that time said it was a 1972 projection.

The correct year for that projection was that it was 1967.

THE COURT: All right.

Q Mr. Yguado, are you aware that the most recent projection by the Bureau of Business and Economic Research of the University of New Mexico projects a population of 704,000 for the year 2000?

A I wasn't aware.

Q You testified on direct examination on Friday about purchasing some land on the west mesa.

Do you recall that?

A Yes.

Q Was that in the College Heights development?

A Yes.

Q Has the College Heights development submitted any plans to the Albuquerque planning department while you were working at the planning department?

A No. I submitted plans on behalf of the College Heights development to the planning department.

Q After you left the planning department?

A Yes. I prepared them as private consultant and presented them to the city.

Q And were those the first plans ever presented to the city on behalf of College Heights?

A Yes.

Q And how much did you say you invested in that land?

A About $7,000. That's what I recollect.

Q And you testified that you and your syndicate, which consisted of three other people, purchased 600 acres of land and you each paid $7,000 apiece.

Do you recall testifying to that?

MR. ARKIN: That is objectionable, your Honor. He didn't testify to that. He said that he paid $7,000.

THE COURT: That's right.

Q On Friday, do you recall testifying on page 6830, line 13:

"I think I had 25 per cent interest in the purchase with three other people and our initial payment, I think, was $7,000 apiece."

Is that right?

A Yes, I guess so, if you are reading it. I don't remember exactly what I said. In essence, that's about right.

Q Well, is that true?

THE COURT: He said, "In essence, that's about right."

Q You said that was your initial payment.

Did you make any further payments?

A No.

Q And it was 600 acres that the four of you were investing in, is that right?

A Yes, sir.

Q And you testified that it was $1420 per acre?

A That's what I recall.

Q $7,000 for four people is $28,000, is that right?

A Yes.

Q And 600 acres at $1420 an acre is somewhere around $80,000, I believe. Is that correct?

A I'm sorry, say it again.

Q 600 acres at $1420 an acre is $852,000.

Is that right?

A Yes, I assume so. I didn't multiply it out.

Q With the four of you paying $28,000 for 600 acres at $1420 an acre, the $28,000 that you paid was obviously a lot less than $825,000.

A That's right.

You want me to explain what we did?

Q Yes, please do.

A Well, I don't recollect it exactly, but we made -- as I recall, a contract to purchase that much land and there was a clause in it for gradual releases and it would be paid for, as I recall, over a ten-year period, and I think the initial amount that was paid, as I recollect, was about 30,000 with the idea that within a year another amount would be paid and that there would be releases gradually over a longer period of time, like you buy a new car, essentially.

Q So, in other words, you were paying off the land over a ten-year period, is that right?

A That's why the second year I sold it, because I didn't have enough money to make those kind of payments, so I sold my interest.

Q And that is the land that you sold, then, for approximately $15,000?

A For my interest, yes.

Q Who did you sell that land to?

A Lyle Talbert. He is an insurance man in Albuquerque and was also a partner in the group.

Q So you made approximately what, $8,000 on that?

A Yes.

Q That was at College Heights, right?

A That's what I recall, yes.

Q Did you buy any land at Rio Rancho Estates?

A No, I didn't.

Q You testified that you determined there were 2500 or 3,000 acres available now in the northeast quadrant of Albuquerque.

Do you recall that?

A Yes.

Q You said it was basically the open section there, the Simms property, is that right?

A Yes

Q Did you determine how much land was available in the northeast quadrant in terms of smaller vacant parcels other than the Simms property?

A No. I was looking at major parcels of land. I didn't go and count every line.

Q Are you aware that there are vacant parcels of land in the northeast quadrant of the city?

A Certainly.

Q Are you aware that in 1972, the Albuquerque planning department conducted a vacant land study and determined that in the east mesa of Albuquerque, just in the Albuquerque city limits, there were 5566 acres of vacant primary land and 4,030 acres of vacant secondary land for a total of approximately 9600 acres of vacant land in the east mesa section of Albuquerque?

MR. ARKIN: May we have a definition of "primary" and "secondary"?

THE COURT: It was given to the jury before.

Q Are you aware that the Albuquerque planning department made that finding in 1972?

A Yes, I -- I don't remember the figure. I've seen the study, but I don't remember the figures, but I assume that's right. I know it's about right.

Q Mr. Yguado, you testified on Friday that the escarpment on the west mesa is a constraint to development.

Do you recall that?

A Yes.

Q Do you know that Volcano Cliffs has been master planned for development on the escarpment?

A Part of it, yes.

Q You testified that there are six square miles available for development in that northwest section of Bernalillo County that you identified on Friday.

Do you recall that?

A Yes.

Q And you stated that in those six square miles there is located College Heights, Volcano Cliffs, Taylor Ranch and Paradise Hills.

Do you recall testifying to that?

A Yes. Parts of those. I might have said all, but obviously all of them couldn't be in that same area.

Q Well, that's my next question.

You testified that you were aware -- withdrawn.

You were aware that Paradise Hills is approximately 800 acres, is that right?

A In total, yes.

Q And 800 acres is approximately 12.5 square miles?

A That's right.

I was talking to the area below the escarpment, and if you know Paradise Hills you know most of it is above the escarpment.

THE COURT: If you are going to do that, will you get off the witness stand, please. Go over to the picture and show the jury what you are talking about.

Q Here is the pointer (handing).

A This is the escarpment like so and it goes right on up, right in -- you can't quite see here, but it generally goes up through this area (indicating).

Paradise Hills is this area, the escarpment lays across here and this is the area of Paradise Hills that is left below the escarpment.

(Continued on next page.)

Q But Paradise Hills is fully available for development, isn't it?

A No, I don't think it is.

Q That is what you said back in 1963, wasn't it?

A I said it was master planned and intended for development. You know, I didn't know --

THE COURT: Keep your voice up, please.

A When I talked in 1963, I was talking about ownerships, not the details of development in each of those projects. I didn't do a master plan for each of those projects, I simply was talking about ownerships.

Q Mr. Yquado, when you testified on Friday about the statement "new growth activities" in "This is My Land," your definition of that phrase "new growth activities" was mater planning efforts. You distinguished between actual physical growth and master planning for future growth.

Do you recall that?

A Master planning was one of the --

MR. ARKIN: Your Honor, there is an objection.

THE COURT: Wait.

Will you refer to the page you are referring to, Mr. Kaufman? We will have the exact language and we will be able to understand what is going on.

MR. KAUFMAN: I believe it is 6911, your Honor.

It is on 6909, line 21 and 6911, line 8.

THE COURT: I don't think that is what you are referring to, Mr. Kaufman.

MR. KAUFMAN: Excuse me, your Honor?

THE COURT: You are talking about the witness' definition of "new growth".

MR. KAUFMAN: That's right.

I believe he answers that on line 22 of 6909 and line 8 of 6911.

THE COURT: Line 21 it is, not that I want to quibble with you.

MR. KAUFMAN: Yes, sir.

THE COURT: All right. Read it.

This is your answer to the question put by Mr. Kaufman Friday, page 6909, line 21:

Q Your answer, Mr. Yguado, was,

"Here you are talking about new growth activities. Those activities to me are putting land together, developing, master planning water and sewer lines. That is new growth, anticipating new growth in an area and that to me is the difference."

On 6911, line 7, in response to a question, "What do you say new growth activities means?"

"A I think I said, but I repeat: I think gathering land together, I think master planning land for development, I think preparation of subdivisions. I think preparation of annexations to the city. Development of master plans for water and sewer, these are the areas that people are going to move onto. These are the activities that take place to accommodate new growth. That is the different kind of activity than the building of houses."

Do you recall that, Mr. Yguado?

A Yes.

Q So you were saying that master planning, those functions attendant to master planning, are the activities that take place to accommodate new growth?

MR. ARKIN: Objection, your Honor. That is not what it says.

Two, he has dealt in this area on cross examination for a substantial period of time on Friday.

THE COURT: I will let him continue.

You were cross examining, Mr. Kaufman, regarding a statement he had made, and that statement is, "And this is where most of the new growth activity is taking place."

He then defined for you what he means by "new growth".

I don't know what the essence of your cross examination has to deal with.

Q Mr. Yguado, you are now testifying that even though Paradise Hills, which has been master planned to accommodate new growth, is 8500 acres, you are now saying that you don't consider that available for development, is that right?

A I think that land has very definite constraints on it, is what I think I said, and without question has constraints on it, just as Voncano Cliffs has constraints on it, even though it has been master planned.

Q But that was one of the new growth activities you were considering when you said that the sentence --

A Without question, it was.

Q -- in "This is My Land" was an accurate statement, right?

A That's right.

Q That is where most of the new growth activities are taking place?

A That's right.

Q And yet you say even though that is where most of the new growth activities are taking place, you now say that a good portion of that is not available for development?

MR. SPRIZZO: Objection; argumentative, your Honor.

THE COURT: Overruled.

A I'm saying that those are indicators of development and as you and I both know, Paradise Hills has shown some development, but there are restraints and, quite frankly, I was there doing some planning for Paradise Hills when they were building the first buildings and they tried to lay water and sewer lines and they couldn't. They had to blast out to lay water and sewer. There was a restraint there that they were not aware of. This evolved and came out as they were beginning to develop.

Q And it has been master planned for 8500 acres, right?

A That's correct.

Q And Volcano Cliffs has been master planned for about 5,000 acres, is that right?

A I believe that's correct.

Q And that would be about seven and a half square miles, is that right?

A Yes.

Q Taylor Ranch is approximately 1500 acres?

A You are asking me? I don't know.

Q Approximately how large do you think Taylor Ranch is?

A I'm really not positive. It seems to me -- I would have to guess.

I can recall hearing something about 5,000 homes ultimately in Taylor Ranch, but I don't know that for an absolute fact.

Q In any event, between just Paradise Hills and Volcano Cliffs in terms of what has been master planned, you have a total of approximately 20 square miles, is that right?

A It's about 13,000 divided by 640, so I guess so.

Yes, 20.3.

Q And that is not including the Taylor Ranch, is that right?

A That's right.

Q Are you aware that the Taylor Ranch was master planned for approximately eight to ten years for development?

A I don't know what the development period is.

Q You testified that EK was the full version of your northwest mesa area that was eventually condensed into KF, is that right?

A That's right.

Q Who did you say hired you to do EK?

A Developers on the west side, as I recall; the people involved in College Heights, some other land owners, I think Albuquerque Gravel Products, I think D.W. Falls.

Essentially, that group of owners, land owners.

Q Do you know who printed KF, the condensation?

A No.

Q Do you know what was left out of KF that was included in EK?

A I've looked at both and read both, but I didn't analyze one to see exactly what was taken out or added to it.

Q Is it correct to say that the portion of EK that describes in detail the different legend items that were contained on your map, such as Angel Ranch, Armijo Properties, Atrisco Grant, the material that appears on pages 4 and 5 of EK, were left out of the condensation KF?

A No.

The map is in here.

Q No, I didn't ask you about the map. I am asking you about what appears on pages 4 and 5, which is the description of each of the legend items that appear on the map.

A What -- I think what we have done is kept the numbers and it says a description down here and it refers to those legend-- some of those legend items.

Q Right. It refers to which legend items? No. 5 --

A Rio Rancho Estates in Sandoval County, which is No. 5, and legend item No. 6, which is the Alameda Grant, legend item No. 8.

Q Legend items 7 and 8, Paradise Hills and Skyview Acres, right?

A I guess they were describing the properties that were around Rio Rancho Estates.

Q That's all that was included in the condensation, right?

A That's all that is in this.

Q The description of the other legend items 1 through 4 and 9 through 17 are omitted from the condensation, is that correct?

A Yes, from this copy.

Is this the entire copy?

Q You identified it as such.

A It looks like 1.

Q On page 7 of Exhibit KE, you wrote, "Given the present average density for the city of Albuquerque (5.16 persons per acre) the area required to accommodate Albuquerque of 1980 owuld be 109,980 acres (the city's present area is approximately 40,000 acres). Even if the gross density is increased, it is obvious that substantial new areas must be developed to accommodate future growth. It is reasonable to expect, therefore, that at least 80,000 acres will be required to accommodate such growth."

Do you recall saying that in your report in 1963?

A Yes.

Q You said you were familiar with the planning departments AMA x-ray and prognosis that was issued in 1972, is that right?

A In a general way.

MR. KAUFMAN: I believe I said 1962?

THE COURT: You said 1972.

MR. KAUFMAN: I'm sorry. I meant 1962.

Q Referring to page 107 of that report --

THE COURT: Exhibit number?

MR. KAUFMAN: 41.

Q Are you aware that the Albuquerque Planning

Department, in projecting the land use needs of the Albuquerque metropolitan area stated that if the maximum population projection came true, that the total area needed would be 58,413 acres, and that if the more conservative but probable population projection came true, that by 1980 only 45,003 additional acres would be needed?

A Additional acres?

Q Yes.

A I'm not aware, you know, of the exact details. I could look at it.

Q This was the report that was issued by the Albuquerque Planning Department right after --

THE COURT: Show it to the witness. Let him look at it.

A Where are we looking?

Q Check where the paperclip is (handing).

(Pause)

A Okay. Yes.

Q Also in that same report the Albuquerque Planning Department reported at page 108 that in the AMA, the Albuquerque Metropolitan Area, there was a total buildable acreage of 69,514 acres and that in the AMA extended region, which they defined as a two mile strip west of the proposed loop expressway and the area enclosed by the steep slopes of the city that there was total buildable acreage of 124,581 acres?

A I believe they wrote that.

Q Were you aware of that at the time that you wrote Exhibit EK?

A Yes, I think that is why they did another plan afterward.

Q Because you think that was wrong, is that right?

A Yes, I don't know what density -- they weren't using the densities that Albuquerque had when they made those kinds of projections.

Q You say that is why they did another report, is that right?

A I am convinced of that.

Q That would be the 1985 land use plan that came out in February of 1964, is that right?

A That's right.

THE COURT: 1964?

MR. KAUFMAN: 1964, yes.

Q The 1985 land use plan?

A Yes.

Q Are you aware that that report on page 24 stated the following:

"Vacant land. Within the study area" I believe there is testimony that the study area is the green outline on that map, on that photograph mosaic, which is 1075-A, "within the study area there are 165,869 acres of vacant land compared with 29,913 acres of urban development and 16,826 acres of agricultural land. There are large areas of vacant land in every quadrant of the city with most of it potentially developable for urban use. There is sufficient developable vacant land within the study area to accommodate population of more than two million."

Were you aware that that is what the planning department said when it came out with its new report in 1964?

A Yes.

Q That they also said on page 32, No. 12:

"Albuquerque has an abundance of vacant land available for urban development. Even the most optimistic growth projections would not utilize this land within the current century."

Were you aware that the planning department said that in 1964?

MR. ARISOHN: What page was that, Mr. Kaufman?

MR. KAUFMAN: Page 32.

Q Were you aware that the planning department said that in 1964?

A Yes.

Q You testified that the planning department was using incorrect density figures.

A I am saying that if they projected that particular need for acreage, that they were using a different density figure than I used and a different figure that was actually historically existent in Albuquerque.

Q Back in 1964 when the 1985 land use plan came out, the existing density figures at that time for residential development and I will quote, page 4:

"Single family residential development will continue to be the prominent housing type. Most of these will be in medium density areas of three to six dwelling units per gross acre."

That was the residential density back in

1964, wasn't it?

A Well, no, as a matter of fact. I think what you are talking about is an idealized idea of what a density ought to be. We planners like to say things we would like to see happen and that happens to many planners but very often they miss the fact of how cities grow and that density figure doesn't reflect at all the gross density.

Q Are you aware that George Carruthers has testified here that the average residential density figure in Albuquerque has been approximately three dwelling units per acre for at least the last twenty years?

MR. ARKIN: Objection, your Honor, is that gross acreage?

Q Residential development density?

A I don't know what George testified to, but I will answer the question.

Q In any event, in your Exhibit EK you were using a density of 5.16 persons per gross acre, is that right?

A That is correct.

Q That meant taking the entire study area that you were reviewing and dividing that by the number of people that you were projecting, is that right?

A I wasn't reviewing any study area. What I was saying is that the population of Albuquerque was so much, the city of Albuquerque had so many acres and that is a gross density of so much and if that continues to apply, the ultimate size of the city based on a particular population would be the number I indicated.

Q But when you used gross density figures, you are including such areas like the municipal airport, is that right?

A I was including the city of Albuquerque's own numbers for land within the corporate area, within the city limits.

Q That included areas like the municipal airport?

A I am not sure that the airport was in it. It might have been.

Q You are aware, are you not, Mr. Yguado, the difference between using gross density figures and net residential density figures, are you not?

A Yes, sir.

Q With respect to the 1985 land use plan, are you aware that the study area of that plan, which is defined by the green outline on the photo mosaic, that the study area acreage was 212,608?

A I think that is a reasonable number, yes.

Q With respect to the 1985 land use plan, population projection was being utilized of 825,000, is that right?

MR. ARKIN: By when?

Q By 1985, am I right?

A Yes.

Q Using your own gross density figures of 825,000 people and 212,60 8 acres, what would your gross density be?

A 212 what?

Q 212,608 acres and 825,000 people. You get a gross density of less than four, wouldn't you?

MR. ARKIN: Four what, four persons?

Q Four persons per acre?

A I came up with 257 but I am not sure whether that is persons per acre or acres per person. Go on.

Q Let's make sure we all understand it, Mr. Yguado.

A Okay.

THE COURT: Why don't you show it to him.

Q We have a figure here of total acreage of 212,608 as the total acreage for the study area.

A Right.

Q The population projection was 825,000 in

1985, is that right?

A Yes.

Q In order to get gross density figures you divide the total acreage into the population and get your gross density.

A What's the 800 --

Q 825,000.

A 3.89.

Q So you get a gross density of 3.89, is that right?

A That's correct.

Q That is a gross density that would be less than what you said the average gross density was for the city of Albuquerque back in 1963?

A That's right.

Q You said at that time it was 5.16, right?

A Yes. That was for the corporate limit, 5.16 was for the city limits.

Q Right.

A Here you are talking about a density that icnludes the military bases, the mountains, the area above the volcano.

Q We can exactly see what the study encompasses. It is outlined in the mosaic and is incorporated in the report.

THE COURT: Which report are you talking about?

MR. KAUFMAN: The 1985 land use plan.

Q That report, which covered that defined study area, reported on how 825,000 people could be accommodated in that study area with a gross density less than the average gross density then existing in the city of Albuquerque, is that right?

A That is right.

MR. ARKIN: Thatis not a fair question based on the testimony of the report itself. May I approach the side bar and I can explain my objection.

THE COURT: All right.

(At the side bar)

THE COURT: Yes.

Repeat the question.

(Record read)

MR. ARKIN: Here is the problem, your Honor, with that question, which I think it is very clear from the report and also from all the testimony we had from Carruthers.

The 212,000 acres includes the bed of the Rio Grande River, all of the land otherwise unavailable because of legal restrictions or that is owned by, for example, other federal or Indians and so forth.

In other words, large chunks of that land as is crystal clear from all of the testimony and all of the reports or that report, too, if you will look at the overall, eliminate that from the 212,000 acres you have nothing like that.

THE COURT: I have had a problem with the whole thing on both sides referring to these figures because if you take Albuquerque it is within the legal limits, there are areas that are undevelopable. Yet they used a figure, I think of 5 persons per acre, against gross.

MR. ARKIN: Yes.

THE COURT: Why can't you use gross against gross here?

MR. FLEMING: As I recall the land use map which accompanied that report, it did not include the 212,000 acres. It didn't include Atrisco and all those things.

THE COURT: He is talking about the outlying area. He is discussing now the 1985 land use program.

MR. KAUFMAN: Your Honor, I ought to point out that Mr. Carruthers' testimony on cross examination when Mr. Arkin went through with him the areas that he said should not be included as being available for development, Mr. Carruthers came out with a total figure of approximately 170,000 acres which would make the gross density figure 4.8, which would still be less than the 5.1 gross density figure that this witness has testified for Albuquerque.

MR. ARKIN: Your Honor, I think if you were to read three brief paragraphs you will understand the point. Starting right here.

(Pause)

b.am

THE COURT: Mr. Kaufman points out that you went through this with Mr. Carruthers and deducted from the 212 the acreage covered by those paragraphs.

You ended up with 177,000 acres if you take those out.

MR. ARKIN: No, I believe if your Honor please, that we ended up with a lot more acres than 17 some odd thousand. I don't recall exactly what it was --

THE COURT: Why don't you do this with redirect with this witness. I think this is a fair question. As I said, I have problems with both sides using these figures because they are not always comparable, but this is your problem and is how you try your case.

I will allow you to go over this on redirect and take the 212 and have him exclude out from the 212 what he thinks ought to be excluded the way you did with Carruthers.

MR. ARKIN: Okay.

(In open court.)

BY MR. KAUFMAN:

MR. KAUFMAN: If I can have the last question read back, your Honor.

(Record read.)

A Yes.

Q You testified you did a master plan for Rio Rancho Estates in 1963, is that right?

A Yes, sir.

XXXX (Government Exhibit 2010 marked for identification.)

Q I show you Government Exhibit 2010 for identification and ask if you can identify that.

A That is the master plan for Rio Rancho Estates which I prepared.

MR. KAUFMAN: The government offers 2010.

MR. ARKIN: Fine.

XX (Government Exhibit 2010 received in evidence.)

MR. ARKIN: You are offering the whole report, Mr. Kaufman?

MR. KAUFMAN: Yes, sir.

MR. ARKIN: Good.

THE COURT: When did you do this, Mr. Yguado? 1963, all right.

THE WITNESS: Yes, sir.

Q Do you know if Rio Rancho acted upon this master plan?

A I don't know what you mean.

Q Do you know if they put your master plan into effect?

A Yes, it is my impression that they used my master plan.

Q Are you aware that the Harman, O'Donnell firm was retained in 1965 to do a master plan for Rio Rancho Estates?

MR. FLEMING: Object to that.

A Yes, sir.

THE COURT: Overruled.

Q On page 10 of your master plan, you stated the following:

"For many years city growth has been within the northeast quadrant of the community toward the Sandia Mountains with the Rio Grande River being an effective barrier to western expansion. In recent years, however, with expansion to the east limited by the Sandia Mountains, areas west of the river have undergone extensive residential development."

When you said in recent years with expansion to the east limited by the Sandia Mountains, let me ask you were you saying that the city as of 1963 or the development as of 1963 could not continue in an easterly direction?

A I said expansion of the city. The corporate areas of the city were limited by the Sandia Mountains and expansion needed to go to the west.

Q You say expansion of the city limited by the Sandia Mountains. Are you talking about city limits or are you talking about the actual development?

A When I talke about a city, I mean specifically that, corporate city.

Q Will you answer the question. Are you referring to city limits or to actual, physical development?

A I am talking about the city limits. The corporate area of the city.

Q Can you answer the question --

THE COURT: Wait, he said he meant the corporate city limits.

Q So that it does not mean that physical development could not have extended eastward as of 1963, is that correct, within the corporate city limits?

A There were areas within the corporate limits that could be developed then to some extent and there are some today that could be developed.

Q How far in the future was your master plan for Rio Rancho Estates looking?

A I didn't make a projection into the future in terms of specific times.

Q Let me ask if you recall this on page 62:

"The land use plan with its associated

demonstration studies are not just for fast development or tomorrow's or next year's but are, rather, a look into the future for 5, 10, 20 and 30 years. This long range view point should remain in the minds of the people reviewing the plans."

Did you make that statement in your master plan for Rio Rancho?

A Yes, sir.

Q Weren't you looking at a period of time at least up to 30 years in the future?

A At least that.

Q At least 30 years?

A Sure.

Q The population that you were projecting for Rio Rancho Estates was a population of 255,359 people?

A I didn't project the population.

Q Do you want to turn to page 79, the inside of the back cover. Is there a total projected population there of 235,359 for Rio Rancho Estates?

A Yes, sir.

Q That's based on total number of families of 656 families?

A Yes, sir.

Q In that population projection for 235,000 odd people was based on a Rio Rancho Estates which was 55,000 acres?

A That's correct.

Q Are you aware now that Rio Rancho Estates is 92,000 acres?

A Yes.

Q You testified that soon after you left the Albuquerque planning department you entered into a joint venture with Harland Bartholomew to produce two reports, an overall zoning study for Bernalillo County which you don't have here as yet and a park and recreation plan, do you recall that?

A Yes, sir.

XXX (Government Exhibit 2011 marked for identification.)

Q I show you what has been marked 2011 for identification. Can you identify that?

A Yes, this is a preliminary copy of a parks and recreation plan for Albuquerque and Bernalillo County, New Mexico.

Q Is this what you said you did in joint venture with Harland Bartholomew Associates?

A Yes, sir.

MR. KAUFMAN: The government offers 2011.

XX

MR. ARKIN: No objection.

(Government Exhibit 2011 received in evidence.)

MR. ARKIN: Does the government have the final study?

MR. KAUFMAN: This is all you provided us with.

MR. ARKIN: You have your own resources, is why I asked.

Q Do you recall I asked you on Friday whether or not you remembered whether it was you or Harland Bartholomew who actually had the contract with the city?

A I said I didn't remember.

Q On the page that lists Bernalillo County officials and Albuquerque city officials, down in the lower right-hand corner it says "prepared by Harland Bartholomew & Associates, city planners, civil engineers, landscape architects, St. Louis, Missouri, Albuquerque, with assistance of Jose Yguado & Associates, Albuquerque, New Mexico, February, 1963."

Then on the next page there is a letter on the letterhead of Harland, Bartholomew & Associates, dated February 6, 1963, addressed to the state planning office, city of Albuquerque, county of Bernalillo, New Mexico. It is in connection with submitting what they say is our preliminary report on parks and recreation

The last paragraph states: "Certain of the basic data for the report was assembled by the firm of Jose Yguado & Associates." Then it is signed very truly yours, Harland, Bartholomew & Associates, Elmer H. Lovelace, partner.

Does that refresh your recollection as to whether or not it was Harland, Bartholomew that was retained by the city and then you were taken on by Harland, Bartholomew to assist in this report?

A As I recollect it and I thought about it the other day, the commission that was interviewing planners had interviewed our firm, which was a new firm and a small firm, and the Harland, Bartholomew firm and some members of the commission wanted to employ our firm and some others wanted to employ the Harland, Bartholomew firm and they say why don't we get these people to work together and do a study for us.

As I recall, that's how it occurred. They wanted a large firm, but they wanted somebody who was aware of Albuquerque and a small, newer firm and as I recall that was the gist of what happened and we were both selected.

Harland, Bartholomew, I think had the prime contract with the understanding that we would be working with them.

Q This parks and recreation study was basically done to inform the city and county officials of what the needs were for parks and recreation land at present and in the future, is that correct?

A Yes, based on the city's land use plan which existed at the time.

Q That would have been the AMA X-ray and Prognosis, right?

A I think so, yes.

Q In fact, this report stated on page 9 under land use pattern: "The Albuquerque urban area is less than half developed. The outline (general) land use plan for 1980 developed by the Albuquerque city planning department in 1962 shows how the existing urban area can accommodate the expected maximum population, for instance, 667,000 by 1980 with relatively little expansion out into areas that are not already developed at least to some extent."

Do you recall that being in the report?

A I don't recall it in the report, but apparently it is. I wish I could agree with it.

(Continued on next page.)

Q You disagree with that statement that is contained in your own report?

A I didn't write that, but, yes, sure.

Q I thought you said this was a joint venture between you and Harland, Bartholomew.

A Yes. Do you agree with everything written by your office?

Q I do for everything under my name.

This came out under your name.

A In part. I didn't write that, that's for sure.

Q You disown this part of the report?

A I simply said I wish I could agree with what you read.

Q I gather that you disagree with it?

A That's right.

Q That report came out before you did the master plan for Rio Rancho Estates, is that right?

The parks and recreation plan was submitted in February of 1963, and your master plan for Rio Rancho Estates was July 22, 1963.

A I think I might have been working on both simultaneously, but I don't remember.

MR. ARKIN: When you say it came out, that is the preliminary report?

MR. KAUFMAN: Yes. This exhibit came out in February of 1963.

MR. ARKIN: The preliminary report.

Q Do you recall what areas of Albuquerque the park and recreation plan designated for future park and recreation sites?

A Yes. As I recall, what we did was took the master plan that the city had made and then based on that master plan it was our job to look at the parks that existed in the area, analyze those parks and develop park proposals that would relate to that master plan.

Their master plan did not include parks and recreation development. It was our job, then, to take their master plan and project a park and recreation system for it.

Q Referring to plate 12, is this the map that depicts what the conclusion of the report was in terms of the creation of park and recreation areas in conjunction with the master plan (handing)?

A Well, it's one of the maps, yes. There are several maps in there.

Q And it's true, is it not, that -- well, let me just get some definitions here.

The larger dotted circles in red, am I correct in saying that those refer to proposed community parks?

A Those situated around as far as are intended to indicated community parks, which are large scale parks serving several communities in several neighborhoods.

We show neighborhood parks, which are typically smaller and serve more distinct smaller -- sort of the kind of park people walk to in the neighborhood.

Q This brown line down the middle is meant to be the Rio Grande River?

A Yes.

MR. KAUFMAN: May I just exhibit this to the jury, your Honor.

(Pause.)

Q And it is true, is it not, Mr. Yguado, that this report proposes neighborhood and community parks in all sections of Albuquerque, right?

A Yes, based on -- no, those areas of Albuquerque that were master planned for development in the 1960 plan.

Q For 1980, right?

A Yes, on that plan, that's correct.

Q And this map and this plan that you and Harland, Bartholomew produced shows the areas for proposed park and recreation sites in conjunction with the 1980 master plan?

A That's correct.

Q And this report that you and Harland, Bartholomew put out shows the location of these proposed park and recreation plans, is that right?

A In a general way, yes.

Q And it shows the location of these park and recreation sites in all sections of the Albuquerque area, is that right?

A All sections of the master planned area.

Q Right.

And that includes northeast, northwest, southeast and southwest; is that right?

A That's correct.

Q And it is true, is it not, Mr. Yguado, that most of the proposed sites for park and recreation areas are east of the Rio Grande River?

A I'm not sure of that.

Q Take a look.

(Pause.)

A I would say the majority are.

Q And that was the projection for 1980, is that right?

A Yes, sir.

MR. KAUFMAN: If I may just have a moment, your Honor.

(Pause.)

Q Mr. Yguado, you have testified that the overall gross density figure for Albuquerque is approximately 5.16 people per acre, is that right?

A In 1960.

Q What has the average density figure been for the Northeast Heights of Albuquerque?

A I don't know, but since that is the predominant part of the town, I would guess that it's about the same. That's estimating, though. I don't know for sure.

Q You would say in the Northeast Heights, the average density is the same, 5.16 persons per acre?

A I don't know that for a fact.

Now it isn't 5.16 in any case. That was the 1960 figure taken for the entire corporate area.

As I understand, it's 4.8 now currently in the city, and it's within the corporate area.

Q When you say within the corporate area, again, you are combining developed and undeveloped land, is that right?

A That's the total number of people --

THE COURT: Within the city limits. Whatever it is, it is. The lines are figured and definite.

Q Do you know with respect to the Northeast Heights what the average density figure is per developed acre?

THE COURT: You mean residentially developed acres as opposed to industrial acres, shopping center?

MR. KAUFMAN: Yes, residentially developed acre.

A It's my impression that I read in the land use plan or the Wilbur Smith transportation study that 55 per cent of the land, total land was in residential use, and I think the density was about 6.16 or something for residential density.

THE COURT: The question is, what is it now, if you know.

THE WITNESS: I don't know now, sir.

Q Mr. Yguado, do you recall Mr. Arkin reading to you from certain exhibits on Friday and asking you if those statements were accurate?

A Yes.

Q Let me read one of those again from 316.

This is page 25602. You were asked whether or not this was accurate as of 1966, and you said that it was:

"Albuquerque is bursting at the seams, but the city is surrounded. Albuquerque's expansion is blocked on three sides by high mountain ranges and government reserved lands on which they cannot build. There is only one direction in which Albuquerque can expand, to the northwest, and that is precisely where Rio Rancho Estates is located."

Do you recall that?

A Yes.

Q You said that was an accurate statement in 1966?

A Yes.

Q Was Albuquerque bursting at the seams in 1966?

A Well, I don't know what you mean by bursting at the seams. It was growing, it was expanding.

Q Wouldn't you agree that bursting at the seams connotes that there is no room left within the physical boundaries of Albuquerque?

MR. ARKIN: If your Honor please, objection to what --

THE COURT: Overruled.

You have asked the question as to whether he agreed with this and he said he did. He is now being cross examined on the words with which he agreed with.

A I agreed because Albuquerque was expanding its city limits in 1966 and it wouldn't be expanding its cit- limits if there wasn't a need to expand them, I wouldn't think.

Q When you agreed that Albuquerque was bursting at the seams -- I will repeat the question again -- doesn't that connote to you that the city of Albuquerque is filled up and has to expand out beyond its city limits in order to expand?

A It connotes to me that the city has to expand its city limits and I think that's what it was doing in 1966 and is still doing it.

(Continued on next page.)

Q Didn't you testify just a little while earlier that the city had expanded its city limits as far as it could to the Sandia Foothills, and yet there was still land within those municipal limits for development to take place?

A I testified that it had expanded its limits as far as it could to the east and since then it has expanded its limits to the north and west.

Q No, no, Mr. Yguado. We are talking about the east.

A Okay.

Q And you testified that the city had expanded its city limits as far as it could to the east.

You also testified that development had not gone as far as it could to the east. In other words, while the city had extended its limit line there, there was still room for development within those limits. Isn't that right?

A I testified that there were open spaces within the corporate limits.

Q So with respect to that area, it was not true, then, that Albuquerque was bursting at the seams on the east, was it?

A I think it's relative. I think it's true in one sense and not true in another.

Q Thank you.

And with respect to the rest of the statement that there is only one direction in which Albuquerque can expand, to the northwest, that is also a relative statement, too, isn't it?

A I think we talked about that the other day.

If you talk about two houses, you don't have to go to the northwest, but if you talk about, you know, 2,000 houses or 5,000 houses, then you do.

Q In 1966?

If 5,000 houses were going to be built in Albuquerque, it would have to go to the northwest?

A I think since 1966 more than 5,000 houses have been built to the northwest.

Q That is not the question. The question is, is that the only place those 5,000 houses could have been built?

A I think we can probably fit 5,000 houses in Albuquerque today into the northeast, but I think that's all we could fit.

Q So when you say this is a true statement, again, it is relative; that what it means is once the rest of the available areas in Albuquerque are filled up, then growth has to go to the northwest, isn't that right?

A No. I just testified that there has been growth to the northwest and the northeast isn't filled up today.

Q I understand that, Mr. Yquado.

But the statement says, "There is only one direction in which Albuquerque can expand, to the northwest."

That was in 1966.

You said that was an accurate statement.

A Yes.

Q What I am asking you now is, just as with the other statement that you said was relative, could be true, could be untrue, depending on how you look at it, what this really means is that once the rest of the available areas in Albuquerque are filled up, then and only then does it become true that Albuquerque can only grow to the northwest?

A No, I disagree with that.

I don't think it follows that the northeast necessarily fills up before the northwest.

I know when I wrote that in 1963 it was based on a particular population that had been projected, and based --

Q Mr. Yguado, I agree with you --

A Thank you.

Q -- that it does not necessarily mean --

THE COURT: Wait a minute. Just ask questions now.

Q Mr. Yguado, you testified that despite the fact that there is available land in the northeast, that fact does not necessarily mean that the northeast has to be filled up before growth goes to the northwest, right?

A Without question.

Q Similarly, if you have available land in the northeast, isn't it true that you cannot necessarily say that growth has to go to the northwest if there is available land in the northeast?

A It depends on the amount of growth you are talking about, sir.

MR. FLEMING: I object to the form of the question, your Honor.

THE COURT: Overruled.

MR. ARKIN: May we have the answer again?

A It depends on the amount of growth you are talking about.

Q And the amount of growth you were talking about was 825,000 people, right?

A No. The projection I think I used was a million projection, and I was talking about 600,000 people when I wrote it.

Q And at that time you were aware of the 1985 land use plan which had been projecting 825,000 people in the study area, is that right?

MR. ARKIN: Objection.

THE COURT: Overruled.

A As I recall, that plan which was done after me used my projection as well as the high projection. They used the Brasher Report the included both of those projections.

Q At the time you wrote your report, you were aware of the AMA x-ray which used the projection of 687,000 people in the projection area?

MR. ARKIN: What study?

MR. KAUFMAN: EK.

A And that's what I used.

Q You were also read a statement from Exhibit 315, page 25585.

Let me ask you, Mr. Yguado, by the way, are you being paid to testify here?

A Yes, sir.

Q How much are you being paid?

A $35 an hour.

Q Page 25585, the following was read to you:

"There is only one direction in which the city can grow. Through the northwest mesa where Rio Rancho Estates is located. The city planners of Albuquerque give an awful lot of attention to Rio Rancho Estates because this is where the city must grow to, grow into, grow out of."

You testified in your opinion, the first two sentences that I read to you were accurate.

Again, those first two sentences were, "There is only one direction the city can grow," the second sentence, "through the northwest mesa where Rio Rancho Estates is located."

Right?

A Yes.

Q You said you didn't know whether or not the next sentence was true, the next sentence being, "The city planners of Albuquerque give an awful lot of attention to Rio Rancho Estates because this is where the city must grow to, grow into, grow out of."

MR. ARKIN: He said he didn't know anything about it, about the city planners. I didn't say it was true or untrue.

Q Do you know whether or not that statement is true or untrue?

A I think that is exactly what I said.

I don't know what a particular planner was thinking about a particular time, so I can't testify as to what a particular planner was thinking.

Otherwise, with that qualification, I agree with the statement.

Q You were a city planner for ten months, right?

THE COURT: Wait, wait now. He was a city planner, Carruthers was a city planner, there were other city planners.

What he is saying is, "I don't know what is in the other fellow's mind."

MR. KAUFMAN: I understand, your Honor.

Q Were you ever aware of any attention that the Albuquerque Planning Department gave to Rio Rancho Estates?

A I can say that if they were planners and they were not aware of what was happening, what was going on, they weren't very good planners.

Q No, that is not the question, Mr. Yguado.

The question is --

A I don't know of a specific bit of attention that they gave, and this is what I meant to testify to earlier.

Q And it is true, isn't it, Mr. Yquado, that the Albuquerque Planning Department has its planning jurisdiction limited by five miles, isn't that true?

A That's a state requirement.

Q And that the Albuquerque Planning Department has never exercised its jurisdiction over county lines, isn't that true?

A That's correct.

Q And Rio Rancho Estates is in Sandoval County, isn't that right?

A That's correct.

Q And the Albuquerque Planning Department is in Bernalillo County, isn't that right?

A That's correct.

Q So as of 1966, isn't it true that the Albuquerque Planning Department could not have given any attention at all to Rio Rancho Estates in terms of its formal duties as a planning department?

MR. ARKIN: Your Honor, objection.

THE COURT: Sustained.

MR. KAUFMAN: One moment, your Honor.

(Pause)

MR. KAUFMAN: I have no further questions.

THE COURT: We will adjourn for lunch. Return at 2:00 o'clock,please.

(Luncheon recess)

EOjw

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

JOSE LUIS YGUADO, resumed.

REDIRECT EXAMINATION

BY MR. ARKIN:

Q Do you recall Mr. Kaufman asking you about your background and credentials during his cross examination, Mr. Yguado?

A Yes.

Q Do you recall that he was questining you from a document?

A Yes.

MR. ARKIN: Will you mark this, Mr. Frezzo?

(Defendants Howard Friedman and Henry Hoffman Exhibit KH marked for identification)

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Q I show you, Mr. Yguado, KH for identification.

Do you recognize that document?

A Yes, sir, I do.

Q What is it?

A It's a Form 251 that consultants fill out for doing work for the federal government. You list your work, your activities and your work history.

Q Your background?

A Yes.

Q The kind of projects you have worked on?

A Yes.

Q Your credentials?

A That is correct.

MR. ARKIN: We offer it.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Mr. Yguado, did you fill out this form?

A Yes, I did.

Q Is this your signature on the last page?

A Yes, sir.

Q Do you know when you filled this out?

A Probably a year ago, a year and a half ago.

Q Do you know what kind of work you were applying for with the federal government?

A Yes.

Q What work was it?

A You fill it out for all work, but in this instance it was to prepare a master plan for some 22,000 acres of land that the federal government held along the Pecos River. It is called the Los Esteros area.

The core of engineers was building a new ranch and they wanted us to prepare a master plan.

Q Is that in the Albuquerque area?

A It is east of Albuquerque about 70, 80 miles.

MR. KAUFMAN: I have no objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit KH received in evidence)

BY MR. ARKIN:

MR. ARKIN: Your Honor, I am not going to read from it, may it be made available to the jury during the recess.

Q Mr. Kaufman also asked you, Mr. Yguado, how you kept up with what has been happening in Albuquerque since 1964-'65, do you recall being asked that?

A Yes, sir.

Q Tell us, how is it that you keep abreast of what is going on in Albuquerque or have you since 1964 or '6?

A Well, first I should explain that my office for, you know, thirteen years has been in downtown Albuquerque at Fourth and Gold. That is about three blocks from City Hall where the planning department is.

Q You changed where your office was?

A Two years ago we moved out to the country.

Q Why was that?

A Well, we got tired of commuting and living in the city mostly, but much of our work is for other towns so we could almost operate from anywhere, but our office has been in the city of Albuquerque, we have had a staff of over twenty people, many of them planners, talking to the planners in the city of Albuquerque, working with those planners. We see them for lunch. Most of us belong to the American Institute of Planners and we go to lunches, we have literature and information on a regular basis, so as a professional planner, we lived and worked in Albuquerque.

Q By the way, Mr. Kaufman also asked you whether you were getting paid for your testimony.

Let me ask you: What is your ordinary rate per hour for consulting with anybody?

A What you are paying me, $35 an hour.

Q So you are getting paid for your time and not for your testimony, isn't that right?

A That's correct.

Q Do you know a man named Phil Garcia?

A Yes, I do.

Q Who is he?

A He is head of the current planning division of the city of Albuquerque planning office. He replaced George Carruthers when George became director.

Q He has Mr. Carruthers' job, his former job?

A Yes, sir.

Q Did you ever have any relationship with Phil Garcia?

A Yes, he was my employee for about three and a half years before he got the job with the city.

Q Did you have anything to do with training Mr. Garcia?

A Yes, I trained him and taught him plenty.

Q Did you have any assistance when you prepared the comprehensive plan for Rio Rancho Estates, which is now --

MR. ARKIN: Do you have the original exhibit, Mr. Kaufman?

Q -- Exhibit 2010. Did he assist you in preparing this?

A Yes, his name is in there. He prepared most of the graphs, charts and drawings in that report.

Q On this report which you did for Rio Rancho Estates?

A Yes, sir.

Q He now holds George Carruthers' job?

A Yes, sir.

Q Is there a man -- do you know a man named Stanley Brasher?

A Yes.

Q Who is Stanley Brasher?

A Stanley Brasher is an economist essentially that has lived in the Albuquerque area a long time. He has since left and gone elsewhere, but he has been a consulting economist for a number of years in the city of Albuquerque.

Q Did he consult with you in connection with the preparation of this plan for Rio Rancho?

A Yes, he did. His name is on there, too.

Q By the way, is he the same Brasher whose statistics or projections or population studies were utilized by the Albuquerque city planning department?

A Yes, he did a study for me for Las Vegas, New Mexico, that was his first projection job. Then he went to work as a consultant for the city of Albuquerque.

Q That's the same Brasher?

A He is called Jerry Brasher, but his formal name is Stanley.

MR. ARKIN: If your Honor please, may I read a few excerpts from Government's Exhibit 2010 which is the comprehensive plan?

I am going to read from my copy. I am reading first from page 3, Mr. Kaufman, at the top.

(Mr. Arkin read from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: To the bottom of the page, Mr. Kaufman.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: I am turning to page 7, the bottom paragraph referring to the history of Albuquerque, New Mexico.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: And on page 8, the last full sentence.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: On to page 10, this is the second paragraph.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: Page 32, the third full paragraph.

(Mr. Arkin read from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: Page 36, the last paragraph, which is captioned by the word "sunshine."

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: Page 51, the first sentence on that page.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

MR. ARKIN: One more. Referring to page 62, the third paragraph and the fourth paragraph.

(Mr. Arkin continued reading from Government Exhibit 2010 in evidence to the jury.)

(Continued on next page.)

MR. ARKIN: May I show the map in this to the jury, your Honor?

THE COURT: No.

MR. ARKIN: No?

All right.

Q You testified a few moments ago, actually, before lunch, in respect to the number of acres at Volcano Cliffs.

Do you recall that?

A Yes, sir.

Q I think it would be best if you stand by the map with your pointer.

Excuse me. I mean Exhibit 1075.

Do you know whether Volcano Cliffs was master planned or not?

A Yes, it was.

Q Did the master plan which was drafted for Volcano Cliffs encompass an area which is on the lava escarpment?

A A substantial part of it, yes.

Q What is the escarpment there? How would you describe it?

A Well, I wish I had some photographs, but essentially it's a very, very high bank or a wall like this of solid basalt rock.

Basalt is a very heavy, black, dark rock, and it's just a solid -- like a sea or a flow of rock.

And this is, like -- I don't know the exact dimensions, but probably 50 to 100 feet high, great big boulders.

Q Is any portion of Volcano Cliffs on the escarpment?

A Most of it is.

I don't know whether you can see it.

Q What portion is on the escarpment?

A I would say at least two-thirds of it is above the escarpment.

Q Are there any restraints or constraints to building upon the escarpment?

A Well, yes. You just can't build on solid rock. You have to have water lines and sewer lines and utilities and to do that you would have to blast canals through this rock.

It isn't like sandstone, this is basalt and basalt is very hard rock.

Q How would you compare basalt to very hard granite?

A Harder.

Q Harder than granite?

A Yes, sir. It's very hard rock.

Q Take Paradise Hills, while you are there, is any portion of the 8500 acres which you spoke about earlier with Mr. Kaufman on the escarpment?

A Yes. Likewise, a very large portion of it.

Q Do you have any idea which portion of it?

A Well, here is Paradise Hills (indicating).

The master planned area is essentially this area here (indicating).

The edge of the escarpment is essentially here (indicating).

So I would say 80 per cent of it.

Q Is on the escarpment?

A Is above the escarpment.

I should explain the escarpment goes sort of in and out, a few little pockets, but essentially it is up on the escarpment.

Q Are you saying 80 per cent of Paradise Hills is situated on rock that is harder than granite?

A Yes, sir.

Q You were questioned, I believe it was on Friday, by Mr. Kaufman in respect to North Albuquerque Acres.

Do you recall that?

A Yes.

Q Identify, again, if you will, upon that 1075 exhibit where North Albuquerque Acres is situated.

A This is North Albuquerque -- this is the north boundary, the east boundary, the south boundary and essentially the interstate is the west boundary, Interstate 25.

Q Do you recall testifying that one of the impediments or a major impediment to the development of North Albuquerque Acres was that it was sold years ago to many out-of-staters, meaning out of New Mexico staters?

A Yes, sir.

Q You also testified that, or at least you were asked, whether out of staters also had purchased Rio Rancho.

Do you recall that?

A Yes.

Q From the point of view of planning and future development, how do you compare North Albuquerque Acres to Rio Rancho?

A Well, firstly, this area is platted. I'm not sure by who it was platted. It was platted on an area without any awareness of the topography of the land.

Q What do you mean by that?

A Well, there are a series of arroyos that go through here and these arroyos carry all of the water from these mile-high mountains here and this water comes down off this water shed and down into here, and they totally ignored these arroyos and they made a grid pattern as if you were doing on a clean piece of paper.

Q Is that without respect to the arroyos?

A As if they weren't there, total disregard.

Conversely, if you look at this platting, this platting --

Q Perhaps it would be easier if you look at Exhibit, I believe it is, 93.

THE CLERK: On the back at the top.

MR. ARKIN: Yes.

Q I show you Exhibit 93, which appears to be -- I think his Honor would like to see it, too.

THE COURT: It's all right.

MR. ARKIN: Thank you, your Honor.

Q Exhibit 93, which is a plat map of Rio Rancho.

Have you had occasion to view this particular exhibit?

A Yes, sir.

Q Are you able to say as a planner whether or not the platting took cognizance or was sensitive to the natural topography of the region?

A Yes.

Q Will you please indicate to the jury how that is so?

A Well, if you look at this, you immediately see that there is an arroyo coming through here (indicating).

The lot lines don't go into that arroyo, but they allow a distance.

Likewise you have an arroyo here, you have an arroyo here and in here, and all of the platting shows an awareness of that arroyo. This pattern of streets, for example, is stopped right here. It doesn't go into the arroyos. It allows for the arroyos because that is the necessary drainage.

Of course, these arroyos don't drain as much -- they don't have a mountain like this next to it to drain, so this is fairly flat area here.

Q When you say that, you mean you don't have the same degree of drainage problem that you do at Rio Rancho?

A Yes, because the water shed is much more.

In effect, that reflects the topography.

In response to your question, that is one of the differences.

Q Are there other differences?

A I think probably the most significant difference is I, and probably 99 per cent of the people in Albuquerque, don't know who platted Rio Rancho because they have never seen them.

Q You mean North Albuquerque Acres?

A I mean North Albuquerque Acres.

Conversely, the developers of Rio Rancho have been there for 15 years, as long as I can remember, and there is a town there, they provided utilities, there is development there, they are involved in the city of Albuquerque and industrial development.

Much of the new industry that has occurred in Albuquerque has occurred in the industrial park in Rio Rancho in recent years.

It is a development activity rather than a taking a clean piece of paper and cutting up lots and just selling them, and to me that is the major difference.

Q Are you saying the fact that Rio Rancho has been there developing for the last 15 years is a major difference between that and North Albuquerque Acres?

MR. KAUFMAN: Objection, your Honor, to the leading.

A Absolutely.

THE COURT: Overruled.

Q Your answer again?

A Absolutely. They are developers. And this man just platted vacant land and sold it. I think that is the big difference.

Q And split?

A That's right.

Q During Mr. Kaufman's cross examination of you, he showed you KF for identification (handing).

Do you recall what that was?

A Yes. That was one of the condensations of the growth and development report that I had written.

XX (Defendants Howard Friedman and Henry Hoffman Exhibit KI marked for identification.)

Q Did you testify previously that KF was a document containing excerpts from the original study which you did, which is EK in evidence?

A That's correct.

Q Are you able to identify KI (handing)?

A KI is, likewise, an excerpt or a condensation of that study that I did called growth and development.

Q Have you had occasion to look through KI?

A Yes, I have.

Q Does it contain excerpts or a condensation of EK, which is your original study?

A Yes, sir.

MR. ARKIN: We offer it.

MR. KAUFMAN: May I have one moment, your Honor.

(Pause.)

MR. KAUFMAN: Brief voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Mr. Yguado, do you recall when KF was introduced into evidence you were asked on page 6820: "Mr. Yguado, is this the only version of the condensation made?

"A Yes, I think it is the only one I have seen. I have seen one with a yellow cover, but essentially, as I recall, it is the only one."

When you say "it is the only one," you were referring to KF, is that right?

A The one with the yellow cover.

Isn't that what I testified to?

Q Let me ask you again or let me read this again.

This was when KF, the white one, was being offered into evidence, and you were asked:

"Was this," KF, "the only version of the condensation made?"

And your answer was: "Yes, I think it is the only one I have seen," referring to this. "I have seen one with the yellow cover, but essentially, as I recall, it is the only one."

A Okay.

THE COURT: That is the yellow cover.

Q You were referring to the yellow cover as --

MR. ARKIN: That is what I am trying to put in right now.

Q -- as the only one that you had seen?

A I saw -- as far as I was concerned, I thought they were both the same. They are essentially the same.

When you showed me the white one, I remembered that they had taken some of the description and put it on the bottom of the map and that's the essential difference.

Q When Mr. Arkin was questioning you, he said, "I show you KF for identification" --

THE COURT: Page?

MR. KAUFMAN: 6820.

Q "I show you KF for identification.

"Are you able to recognize that?"

That is the white one.

Your answer was: "Yes. That is the condensation report.

"Q That is the condensation of your report which you prepared in 1963, right?

"A Yes, sir."

Then KF was offered.

A It is the condensation of my report. So is the other one.

Q You said it was the condensation?

THE COURT: Wait, wait. [illegible]

Q When was the first time you saw the yellow covered version?

A Back when I read the original draft, again, that must have been in 1965.

Q Did you prepare the original draft of this?

A No. I prepared the original report that I did.

They asked for permission to excerpt copies, they sent me a draft of the report that was being reproduced and that's when I saw it.

Q They sent you --

A I have a copy just like that out of my library which is the yellow.

MR. ARKIN: Do you have it with you?

THE WITNESS: I think so.

MR. ARKIN: Sure.

THE COURT: I don't know what the fuss is about.

A This is the one --

THE COURT: Wait a second.

The answer why Mr. Yguado is, "Yes, I think it is the only one I have seen. I have seen one with the yellow cover, but essentially, as I recall, it is the only one."

Now, isn't that the yellow cover that is now being offered?

MR. KAUFMAN: That is not my reading of it, your Honor.

MR. ARKIN: If your Honor please --

THE COURT: Objection overruled.

MR. ARKIN: Thank you.

(Defendant Howard Friedman and Henry Hoffman Exhibit EI received in evidence)

CONTINUED REDIRECT EXAMINATION

XX BY MR. ARKIN:

Q Did you just say, Mr. Yguado, that you have a copy of this in your own library?

A Yes, sir. It is here (indicating).

Q Take your own copy, if you will.

Look at page 7.

I refer you to pages 7 and 8.

A Okay.

Q Does this particular copy of the condensation set forth all of the particular legend items with respect to land on the west mesa or in the western direction from Albuquerque?

A Yes, it does.

Q All the ones which Mr. Kaufman suggested to you was deleted from the white copy?

A Yes.

Q Was this the same condensation which you gave Rio Rancho permission to publish?

A Yes, sir.

Q And of which you have a copy?

A Yes, sir.

This is marked "Office Copy Only." It has a tape on it. And this is our copy.

Q Do you recall being asked about the Atrisco Grant property?

A Yes, sir.

Q With respect to Atrisco, is that available now, as of 1977, for the building of residential homes and factories, commercial property?

A Well, except for a very limited portion, no.

Q Why is it not available?

A Because there are title problems and the land can't be sold.

Q With clear title?

A That's right.

Q What does that mean, if you know?

A Well, essentially, for years and years there has been controversy over the title of the lands within the Atrisco Grant.

The heirs of the Atrisco Grant were very -- masses of people. This was from 16 or 1700. And all of the children, all of the cousins, all of the nieces and nephews, et cetera, had a right to some land, and over the years, whoever was head of the Atrisco Grant would write a deed for five acres and they had all these little parcels all over that ground, and none of these -- very often didn't bother to survey, they didn't bother to spell anything out, so it was a very complex overlapping of land so nobody quite knows, as I said the other day, there are maps that show a row of lots this way and another overlapping row of lots this way. They overlap yet supposedly they are different lots. So you just don't know who owns what exactly.

Except for a very small acreage within that area -- and that was essentially the Snow Vista lands -- in 1963, when I was working with Snow, that was the only area that came close to being clear.

If you look at the boundary of Snow Vista it kinds of goes like this (indicating), and the reason the boundary is like that --

Q Indicating an uneven quasi-rectangular figure?

A Yes, sir.

Snow Vista is not a square area, it has a very ragged or jaggered series of edges and points and directions, and the reason for that is that it was that area, the only area that I am aware of, thatthey thought would be reasonably clear of title problems.

Subsequent to a master plan, Snow had acquired title suits that went on for some years, and, as I recall, several hundreds of dollars worth of money spent --

Q Several hundreds of dollars?

A Several hundreds of thousands of dollars of money spent to help clear the title for that land.

I should say Snow had to sell it because of the immense cost involved.

Q Assuming that you were able to clear the title problems of Atrisco at some point in the future, are there other problems to developing Atrisco?

A Well, when I was talking to Mr. Kaufman the other day, we talked about the broadening of the flood plain down there.

What happens, on a flat area and this flood plain spreads out, there is a lot of sand. You can see it on the map.

You can see here, rather than this kind of configuration of arroyos, you see this kind of large greyish area and all of that is sort of the end of the eluvial fan. The eluvial fan is dirt that spreads out, and all of that is flood tone area and I'm sure it is reflected in the hundred year flood plan.

Q You were also questioned about the Rio Puerco Basin.

Do you recall that?

A Yes, sir.

Q I hate to have you get off the stand and go back, but would you?

Where is that land, the Rio Puerco Basin?

A Here (indicating).

Q And you spoke about that in your growth and development study?

A Yes.

Q By the way, is that land within the Rio Grande Basin?

A Yes, sir.

Here the Rio Grande River and the basin, essentially from here, the eastern city limits, and essentially from this larger escarpment.

This is a much larger escarpment than this, but this is a very abrupt fall right here (indicating).

This is the end of the basin, the Rio Grande Basin (indicating).

Q In your report, didn't you call the Rio Puerco Basin as part of the mesa?

A Yes.

Technically it is not absolutely correct, because the mesa area is a plain that has to do -- what I was trying to do in that report was to define the very large area that was northwest of Albuquerque and I guess I could have gone all the way to Los Angeles, which has a lot of open land, but essentially I was talking about this very large area (indicating).

Q Would it be fair to say that the Rio Puerco area is within the Albuquerque metropolitan region as you understand that to be?

A No, of course not.

Q Would you say that that area is likely to be developed?

A Well, we would have to go over about two million, I suspect.

I think at sometime in the very distant future it might, but I think it would be a very long time.

Q How would you compare the developability of that area to Rio Rancho?

A Well, the fact that Rio Rancho starts here and Rio Rancho is developing as a peripheral part of Albuquerque and what is here now will ultimately shift and move over with the center of the community here and the developing of the community around it.

Q Does the existence of the escarpment, the volcanic escarpment which you previously have shown us --

A This one (indicating)?

Q No, the voncanic escarpment.

-- have anything t- do with the ultimate developability of Rio Puerco as compared to Rio Rancho?

A Well, I think, again, as I testified the other day, the city has purchased land here and there is a large block of federal land being acquired here (indicating) and this federal land -- this federal land is being acquired by the city, as a matter of fact, as a barrier to growth in this direction.

The city is, in fact, holding this to confine the geometric limit.

Q Is not the escarpment itself a barrier to growth to that direction due west?

A I think that's why they can buy it so cheaply because you really can't build on it.

Q You also testified about the Angel Ranch.
Do you recall that?

A Yes, sir.

Q And you testified about the Armijo Properties?

A Yes, sir.

Q And the Mesa Oesta?

A Yes, sir.

Q Were all of those properties due west of Albuquerque?

A Yes, sir, and the Puerco Valley.

Q They are off the map, so to speak?

A Yes, sir.

Q Off of 1075.

A Yes, sir.

Q Has there been any development in those areas since 1963, to your knowledge?

A No, sir.

Q Are there, in your view, barriers or constraints to developing those areas?

A Yes, sir.

Q What are those?

A Well, for one thing, the distances, but the distance without anything interrelating to it.

The escarpment here, the lack of roadways that go out there, the major bulk of public property in between are among the constraints that keep it from developing, and essentially it is out of the Rio Grande Basin.

Q And is it outside of the Albuquerque metropolitan region as you understand it to be?

A Yes.

Q Have you, since 1963, seen any development in Volcano Cliffs?

A Just a minimal amount at the bottom of the hill.

Q Has any of that development been above the escarpment?

A No, sir.

Q Have you seen any development at Taylor Ranch?

A Yes, sir.

Q Have you seen houses built there?

A A few houses are being built here, yes.

Q A few hundred houses?

A Yes, if that.

Q Have any of them been built above the escarpment?

A No, sir. That's all below (indicating).

Q What about Paradise Hills, have you seen development there since 1963?

A Yes, sir.

Q Have you seen development there above the escarpment?

A No, sir.

I know one development that was started there by Coda Roberson and that's when they found the base salt and they stopped building.

Q Does the escarpment extend up to Rio Rancho?

A No, sir.

Q Is there any volcanic or base salt ground or earth at Rio Rancho?

A No. This is clear land and the SCS has done studies in this area and indicated it is suitable for development.

THE COURT: Who?

THE WITNESS: Soil Conservation Service, sir.

THE COURT: Who are they?

THE WITNESS: U.S. Department of Agriculture.

They have done a study for the Rio Grande COG and indicated that that was clear, usable land.

Q You were asked by Mr. Kaufman how -- I don't know his exact question -- how, in words or substance, the far northwestern portion of Rio Rancho, which you can indicate with your pointer on that mosaic, would differ, in your view, from potential communities in the Rio Puerco area.

Can you explain that to us?

MR. KAUFMAN: Your Honor, I only asked him in terms of distance.

MR. ARKIN: I will expand the question, then.

THE COURT: Go ahead.

Q Hwo would you compare the ultimate developability for homes and factories and so forth of the far northwest portion of Rio Rancho to potential development of homes and factories in the Rio Puerco region, which is off the mosaic?

A Well, I worked on the master plan for Rio Rancho. Essentially the projection of the master plan indicates a downtown development in this area, that is a downtown comparable to the kind of downtown in Albuquerque.

This area is growing out into and forming its own identity as a community and I think that the big difference will be from here to here. In other words, this is a gradual growth and it is controlled very nicely by the developers by providing water and sewers and it continues to expand so I think it is a rational growth pattern rather than it arbitrarily plopped down in the middle of nowhere.

Q Over the escarpment?

A Yes, sir.

MR. ARKIN: Sit down again.

THE WITNESS: Thank you.

Q In your comprehensive plan which you did for Rio Rancho, you have in there population projection 235,000. Will you explain to his Honor and the jury what youwere speaking about in that report when you made that statement?

A Very well. I was really tlaking about population capacity and what we in essence did was to prepare a master plan of the entire area and we created a series of neighborhoods, pretty much like the park plan that Mr. Kaufman showed you, where you had a dot in the center and a circle around it. There was a school and a park in the center of each neighborhood.

It was a series of neighborhoods all interrelated and the neighborhoods had major streets around it and minor streets inside it so people could walk to the school or neighborhood park within this area.

These series of neighborhoods then all sort of interrelated and tie together to form a large community.

Q What you were talking then was capacity as opposed to projected population?

A Each of these neighborhoods has a capacity for a certain number of people, based on the plotting pattern and based on the street pattern.

Within these areas and we projected population or capacity for each of these areas so that the total number of lots in Rio Rancho could accommodate a total number of people at essentially the same density as the city of Albuquerque. I think our density was just slightly below the city of Albuquerque's.

Q So that if you were to add to your calculations the 1970 or '71 -- '69 or '70 acquisition of 35,000 more acres, would that expand the capacity which you then projected?

A Certainly, yes.

Again, we can fit that many more people into that area, the additional area.

Q It is fair to say that what you were addressing here was capacity of the land?

A That is exactly it.

Q Do you have any opinion, speaking in terms of the number of people who may come to live in Rio Rancho in the future --

MR. KAUFMAN: Objection, your Honor.

MR. ARKIN: Let me finish my question.

MR. KAUFMAN: I thought you were.

MR. ARKIN: No, no, I haven't.

Q Have you any oinion, sir, as to the period in time from now, say, 1977, the letter that you have before you, say, two hundred and some odd thousand people, 235,000 people at Rio Rancho?

A Yes.

Q What is that opinion?

A Well, I said yesterday, I think, that I feel that there will be a million people within this area by the year 2,000. I think the other planners' views 825,000 people within this area.

MR. KAUFMAN: Objection, your Honor. I don't know what the witness is referring to, the other planners projection --

A The 1985 master plan, the Wilbur Smith plan both used the basis of 825,000 people.

MR. KAUFMAN: The witness is talking about a projection for the year 2,000 and not for the year 1985. We are talking about his projection now in 1977 and not a projection in 1973. That is when those other projections were made.

THE COURT: Objection overruled.

A In any case, based on that projected population, either mine or the other one, we are talking about 300,000 people in this area now, in essentially this area is filled up except for this.

Q Indicating a small portion in the northeast?

A So, based on this kind of density, it is perfectly reasonable to assume from my point of view that another 300,000 people, for example, 600,000 people would fill up a comparable area here and I think by the year 2,000 --

Q Indicating the northwest region encompassing Rio Rancho, is that correct?

A Yes, sir. In other words, this area is no larger than this. If this has 300,000 people it is very obvious another 300,000 people will fill this area up in essentially the same density.

Based on my feelings of the projections as well as the other projections, I think it is perfectly reasonable to assume that that will be by the year 2,000.

Q Do you recall being asked by Mr. Kaufman about the existence of other vacant land, aside from the 2500 or 3000 acres we were talking about in the northeast section of Albuquerque?

A Yes.

Q Are you familiar with the concept of in-fill?

A Yes.

Q Is it your view as a city planner that the existence of vacant land in any section of any city, I am asking you a general question based upon your experience as a planner now, the existence of vacant land in any portion of a city, whether that land must be utilized before the city expands in any particular other direction?

A Well, in walking around Manhattan I ought to call your attention to Central Park, which is a beautiful piece of land, which isn't built upon.

I assume smoe people would like to fill it in, butthere are a lot of areas in Manhattan and that aren't filled in that are being built upon now and I see that happening in every other city that I have ever seen.

There are open areas. There are areas, for example, being held so that when you get enough people there, then you will build a shopping center.

Or there are areas, just thousands and thousands of people own, individuals, I own a lot. Maybe I want to sell it and maybe I don't want to sell it. Maybe I need the money and maybe I don't. I think these are the kinds of decisions that happen in every city. Planners would like to draw nice pictures and say that is how it should be, but that is just not so.

It is my feeling that there is a trend of growth, a direction of growth, I think the direction of Albuquerque was established by the employment centers, the bases, I think it is changing and has been changing and it is going to the northwest and I think there will be open areas within Albuquerque and there are open areas in every city that I can imagine and there will continue to be and these areas will change as the years go on. That is the way it is. It is not nice and clean and simple and a nice linear line. It is just a lot of people making a lot of decisions about their own community.

Q Does the concept of full development of any particular area, say a community, contemplate that there shall be no vacant land or unused lands within that area?

A No. As I said, Manhattan has vacant land and they are building buildings today and I suspect it will continue.

Q Is the concept of in-fill -- you know what in-fill is?

A Yes, essentially trying to fill in vacant land.

Q Is that concept inconsistent with the projection of expansion and growth of a city in a particular direction?

A No, Albuquerque has shown some in-fill, some limited amount of in-fill, but it has actually had growth in another direction.

Q Let me refer you to Exhibit 41k which is the AMA x-ray and prognosis study, page 47 of that study.

MR. ARKIN: Do you have a copy of that?

MR. KAUFMAN: No.

MR. ARKIN: Let me show you what I am going to quote from then.

(Pause)

MR. KAUFMAN: Your Honor, Mr. Arkin has shown me what he is going to read or direct the witness' attention to. I believe to be complete that another item has to be either read or pointed to as well.

MR. ARKIN: It was not pointed to when Mr. Kaufman cross examined my witness here and that is why I want to point to it.

THE COURT: Mr. Kaufman cross examined him on that?

MR. ARKIN: Right, but he didn't point to the portion which I wish to point to.

THE COURT: You may.

MR. ARKIN: Thank you very much.

Q Referring you to page 47 of Exhibit 41, which is the AMA x-ray and prognosis study, and to the schedule upon that page, assuming a density -- excuse me -- assuming a density of 5.16 persons per acre -- is that the historical density of Albuquerque, by the way?

A That is the high. Actually it is lower.

Q It is lower now?

A Yes.

Q Taking that, do you agree that this particular study taking a projected population by 1980 of 664,400 persons states that total area needed in acres is 128,701?

A Yes, sir, that is based on the historical density, 664,000 people. 128,701 acres needed. That is actually about 20,000 more I wrote in my growth and development study.

Q That is a projection of 20,000 more acres required based upon historical density with a projected population of 664,000 by 1980 than you yourself had placed in your growth and development study, is that correct?

A Yes, sir, in this study I said 109,000.

Q You agree that appears in Government Exhibit 41?

A Yes, sir.

Q That Mr. Kaufman quoted to you from before in part?

A Yes, sir.

Q This morning you were questioned aboutthe master plan, the comprehensive plan which you did for Rio Rancho, do you recall that?

A Yes, sir.

Q Do you know whether Rio Rancho has other master plans prepared for them?

A Yes, sir.

Q By whom, if you know?

A I think there have been two plans done that I am aware of. One by the firm of Flatow, Moore, Bryan and Fairburn and one by Harland, O'Donnell & Henninger.

Q Who if you know are Flatow, Moore, Bryan and Fairburn?

A Flatow, Moore Bryan and Fairburn I guess are the largest planning architectural firm in Albuquerque. Very competent and very capable people.

MR. KAUFMAN: Your Honor, I object and move that be stricken.

THE COURT: Overruled.

Q Just a couple of more questions.

We need you with the pointer again at the exhibit.

Do you recall being asked by Mr. Kaufman about the 212,000 acre study area which he said was outlined essentially in green?

A Yes, sir.

Q That was the study area contained in the 1985 land use study?

A Yes, sir.

Q Did he also, do you recall being asked questions about projected densities of population for 1985?

A Yes.

Q Do you recall being asked to do certain computations as to those densities within the 212,000 acres?

A Yes, sir.

Q Do you recall also being asked to answer certain questions based upon the 212,000 acres being within the gross acre calculation?

A Yes, sir.

Q Now, as a planner is it fair to include all of the area within the green outlines within your calculations for the purposes of determining gross acres upon which you can thereafter calculate densities per gross acre?

A Of course not. That is the point I tried to make when he was using the figure this morning. We talk about areas that are generally developable, but not areas that are absolutely not a part of the developable area.

Q Would you using the pointer in going around that mosaic within the green outlines indicate those areas which in your view should not be included within the calculations of gross acreage?

A Essentially we have this area that is developable, as I see it. In other words, up to North Albuquerque Acres here up to where the city has acquired open park area here. Down to the Manzano Base and to the Kirtland Air Force complex excluding -- well, this line goes way down to here. I guess I am doing it in the reverse.

THE COURT: Let's do it frontwards. Show what you would exclude from the 212,000 acres and if you can give us an approximation of what you are excluding, tell us.

THE WITNESS: It is an approximation off the map. Essentially North Albuquerque Acres, which is about 7,000 acres.

This area from this line and from this purple line across, all of this, which if I had to guess would be another seven or 8,000 acres. All of this area to the south, Manzano's, the state land, the large mass here, which has to be almost as large as all of Albuquerque again, I calculated 50 square miles here and I would guess that there is 40 or 50 square miles in this area down to here.

All of this, another 15 or 20 square miles in here and this area above the escarpment. All of this and all of this. Again my guess would be eight or 10,000 acres.

Q Those areas which you were dealing with, are those areas you are excluding from the 212,000 acres?

A Yes, I am not trying to calculate exactly, but I am talking about general areas.

In other words, the areas that is developable from my point of view is this area in here and this area in here and this area in here.

THE COURT: Wait, stop pointing outside the green line. The question is inside the green line.

THE WITNESS: All right.

A Did I answer it?

Q His Honor I think wants you to do it again more slowly and hopefully with greater precision, is that so, your Honor?

THE COURT: Yes.

Q Take your time.

A North Albuquerque Acres from my point of view is not developable.

I would exclude for purposes of calculation all of the mountain areas and the foothill area in here, all of this. There is no way that it can ever be developed in a reasonable manner.

The military bases, this Tijeras Arroyo and all of the state land and this land south to this line would need all to be excluded.

THE COURT: Why?

THE WITNESS: For the fact that this is the Tijeras Arroyo, a very serious flood problem. The fact that there is the airport and the military bases through which roads probably could not be run.

The fact that this land down here is in state ownership and this land down here is Indian ownership.

THE COURT: We are not wirried about below the green line.

A Within this would be all state ownership.

THE COURT: How many acres do you attribute to that portion which is sort of southeast and south?

THE WITNESS: This area?

THE COURT: Yes.

THE WITNESS: Well --

MR. ARKIN: Would you like him to measure it, your Honor?

THE WITNESS: Essentially this area here is about 50 square miles and I would say that this I would approximate at about 40 square miles.

THE COURT: All right. That takes care of the southeast and south.

Now, go over the Rio Grande River.

THE WITNESS: These areas that do not show development are areas of the Parajito and the Atrisco grants and except for some 3,000 acres of Snow Vista and some 600 acres of industrial mark here, essentially all of that would be undevelopable.

THE COURT: How much does that add up to?

THE WITNESS: Just based on this size, I would say 14,000 acres and then this area along the escarpment to the northwest of the escarpment, which has to be another 10,000 acres, I would say, is not developable.

MR. ARKIN: Back on the stand.

Q You were asked also on cross examination about the statement whether it was -- about the statement of growth only to the northwest and whether that was true or untrue. Do you remember that?

A Yes, sir.

Q In the same context you were asked -- were you asked about the existence of some land in the northeast, do you recall that?

A Yes, sir.

Q Then you eventually responded to one of Mr. Kaufman's questions and you said that the statement of growth must only be to the northwest can be true or untrue depending upon how you look at it, is that correct?

A Yes.

Q Would you clarify that for us?

A What I meant essentially and I thought I said it then, if you build a few houses on a few lots that could take place.

If you are talking about a growth trend and a large amount of growth, you are talking about the northwest and it is perfectly reasonable.

Q That would be a fair and honest and accurate statement to say it must only be to the northwest?

A That's what I agree to, yes.

Q There is one thing I left out when you were going around that map. You don't have to get off the stand, but would you agree that the river bed, which is within the greenlines on 1075, is also not available for the building of homes and commercial establishments?

A Not only the river bed, but beyond that. The city's policy is that this entire valley area, all of this, all of this area down in here, is flood plain area. This area along Coors Road, this is designated as flood plain area and the city's plan says they do not recommend any additional building in that area.

Q Do you agree that you can't build on the river bed?

A Yes.

MR. ARKIN: That's all.

THE COURT: You may have a limited recross.

MR. KAUFMAN: Thank you, your Honor.

XX RECROSS EXAMINATION

BY MR. KAUFMAN:

Q Mr. Yguado, you were just adding up the acreage in the areas that you were excluding.

A I wasn't adding.

THE COURT: I added it, though, 56,000.

Q 56,000 acres, is that right?

A I am really not sure. I don't know. I talked in square miles and then I talked in acres.

Q Depending upon whether you were talking in square miles or acres, my addition was around between

51,000 and 63,000.

THE COURT: I came out about 56 which is right in the middle.

MR. KAUFMAN: Right.

Q If you take 56,000 acres from the gross study area of 215,600, you get a total area of 156,600?

MR. ARKIN: If your Honor please, does that exclude the river bed?

THE COURT: No. What is the river bed if you want to have that excluded?

THE WITNESS: I think to really calculate the acreage it would take about eight hours.

THE COURT: We don't have that much time.

THE WITNESS: I understand that.

THE COURT: You are taking the length of the river plus its width?

THE WITNESS: Are we talking about the flood plain?

THE COURT: You say flood plain cannot be developed on, that would have to be excluded also?

THE WITNESS: Part of it is developed now, but the policy of the city is to not allow additional development.

THE COURT: That would have to be excluded then?

THE WITNESS: The flood plain down here is roughly two miles. The flood plain here is roughly two miles.

THE COURT: What's the length of the river between the two?

THE WITNESS: 3, 6, 9, 12, 15, 18, 21, 22 miles from there to there.

THE COURT: That's outside the green line, isn't it?

THE WITNESS: No, up to here. All of Corrales is in the flood plain so it comes up to here.

This is about three miles long.

THE COURT: How many did you say, 19 miles?

THE WITNESS: 3, 6, 9, 12, 15, 18, about 20 miles.

THE COURT: All right, times two is 40 miles.

THE WITNESS: 40 square miles.

THE COURT: Times 640 acres to a square mile, 2500?

THE WITNESS: 25,600.

Q Mr. Yguado, you said the village of Corrales is in the flood plain, right?

A Yes.

Q Yet there is a village there and people living there, right?

A That's right.

THE COURT: Not that you can't live there from past living, but you can't live there in the future.

MR. KAUFMAN: I understand but we are calculating gross density of 825,000 --

THE COURT: Do you want a couple of thousand acres taken off? Is that going to make a difference in your position?,

MR. KAUFMAN: Yes, because you can look in the north and south valley and that development constitutes part of the projection of 825,000 people.

THE COURT: He is talking about what is going to go in the future.

MR. KAUFMAN: We are talking about gross density for a projected population.

THE COURT: How many acres do you want to take off of 25,600? You take your choice and we will take it out.

MR. KAUFMAN: I don't think the flood plain should be excluded. I think the river bed should be excluded. People already live there.

THE COURT: But you can't put any more in.

MR. KAUFMAN: That's true.

THE COURT: What is your estimation of what is already inhabited?

MR. KAUFMAN: If the witness can calculate what the gross acreage is of the river bed, I will take that figure.

THE COURT: What about the flood plain area where there are no established homes that can't be put in?

MR. KAUFMAN: If he can define where nobody lives --

THE COURT: I will take your figure. 15,000 out of 25,000?

MR. KAUFMAN: I will do it, your Honor, if I can have a ruler.

THE WITNESS: Do you want to use mine?

Q You said the river was about 20 miles long, right?

A Right. It's two inches to a mile.

Q The width is about what, a quarter of an inch, an eighth of an inch?

A Half a mile.

Q You say the Rio Grande river bed is half a mile wide?

A I think between the drain ditches, which is that area which belongs to the middle Rio Grande Conservatory District, right here it is half a mile. If you want it right here, it is about a quarter mile, you know, it depends on where you want to go. Here it is about three-fourths of a mile.

Q In order for it to be three-fourths of a mile, it would have to be more than an inch on this map, is that right?

THE COURT: Mr. Kaufman, give us a figure. If you want to take 15,000 out, we will take 15,000.

MR. KAUFMAN: Your Honor, I will take 20 miles times half a mile which would be 10 square miles or 6400 acres, which would leave --

THE COURT: You had better use that machine a little faster or slower, I don't know how.

Start all over again.

MR. KAUFMAN: Taking 20 miles by a halfa mile would be 10 square miles times 640 acres would be 6400 acres.

THE COURT: Yes.

MR.KAUFMAN: Now, your Honor's figure, I believe, was 56,000 acres, is that right?

THE COURT: I had 156,000 plus 25,600 acres in the river bed and flood control. Now you want to put something back. I gather what you want to put back are the inhabited areas and the flood control area?

MR. KAUFMAN: Correct.

THE COURT: How much do you want to put back? You can't put it all back.

MR. KAUFMAN: Whatever your Honor's figure was less the 6400.

THE COURT: 45,000 acres, it can't be.

I came out with 156,600 acres that the witness says he would exclude from the 212,000 acres.

Now he wants to add an additional amount and that's the river bed plus the undeveloped portion of the flood control area.

MR. KAUFMAN: He wants to take that figure away from the 156,000.

THE COURT: He wants to take it away from it and not include that?

MR. KAUFMAN: That's the area that's left for development. The witness wants to further reduce that figure --

THE COURT: That's right, I am sorry.

MR. KAUFMAN: That figure should be reduced by the 6400 which would give us a figure of 150,200 acres.

THE COURT: You are just using the river bed?

MR. KAUFMAN: Yes, your Honor.

THE COURT: What about the portions of the flood control area on which you can't build any more?

MR. KAUFMAN: Your Honor, people already live there.

THE COURT: You don't listen, on which you ca no longer build. Not that you live there.

If you live there, you live there and you are included. If the land is there and you can't build on it, it is excluded.

If there is vacant land on which you cannot build, it is excluded.

MR. KAUFMAN: Correct. The witness has defined the flood plain --

THE COURT: He pointed to Coors Road.

THE WITNESS: Two miles wide and 20 miles long.

THE COURT: Nobody is there and you can't build there.

MR. KAUFMAN: That's not true, your Honor. There is a development right here.

THE COURT: Show him what you were talking about, please.

THE WITNESS: Everything else. There is a very little scattered development in that area. All of this is open. This is all open.

The city's policy is that you don't build in the flood plain and we maintain this as an agricultural area to the extent that we can. It is the only agricultural area we have.

THE COURT: The government's own expert said they wanted to maintain agricultural land there.

MR. KAUFMAN: Mr. Yguado, you can resume the stand.

THE COURT: Can you resolve this whether it was 156,000?

MR. KAUFMAN: We will get back to it, your Honor.

Q Is Coors Road also known as Route 448?

A Yes, sir.

Q Are you familiar with the Albuquerque planning department's area and urban centers plan put out in 1975?

A Yes, sir.

Q Is this the map that demonstrates that plan?

A Yes, sir.

Q Isn't it true that this map --

MR. ARKIN: Didn't Mr. Kaufman use this on cross examination. I thought this was recross.

MR. KAUFMAN: No, I didn't use this, your Honor.

THE COURT: Not that I know of. Go ahead.

Q This is the most recent plan put out in 1975. Doesn't this plan show development, some development between

I would guess that there is 40 or 50 square miles in this

the river and Coors Road?

A I am glad you qualified it. Some development, yes, sir.

THE COURT: The argument isn't what is there now. The argument is you can't put any more in.

MR. KAUFMAN: Your Honor, I would be willing to exclude the portion of that flood plain that is defined on this map as rural and open, but everything else that's classified as --

THE COURT: For the whole two miles?

MR. KAUFMAN: Yes, your Honor.

THE COURT: All right, what is it?

MR. KAUFMAN: It occupies about half the distance between the river and Coors Road down to the University of Albuquerque. Thereafter none of it is considered open until you get down to what is called, a little bit north of Gun Club Road, which I believe is somewhere down in this area.

Then that area south of Gun Club Road and the river and Coors is classified basically as rural and open.

Basically the area from the university to Gun Club Road is classified as either established urban or semi-urban from the university down to Gun Club Road.

THE COURT: I gather you would take the figure of

10,000 acres out of the 156?

MR. KAUFMAN: I will take it, your Honor. 146,000.

THE COURT: All right. Now the 212, according to this witness, is down to 146,000 acres.

MR. KAUFMAN: That's right.

Q Mr. Yguado, given --

MR. FLEMING: We can reserve on that, can't we?

THE COURT: You mean you want to go home with your calculator and come back?

MR. FLEMING: No, I want to do the measurements.

Q Given the projected population we are working with of 825,000 and given a figure of 146,000 I believe we are working with you reach an average gross density of 5.65, is that correct?

A 825,000, what is your number now?

Q Divided by 146,000.

A 5.65.

Q Right. And the average gross density that has existed in Albuquerque is 5.16 so we are talking of an increase of about .5 per cent per gross acre, is that right, given all your exclusions from the study area, is that correct?

A Yes, except that I didn't add them up. With due respect, your Honor, these are general figures and I don't know that that figure is valid. I would have to sit down and measure the map and then I can give you a figure.

If they are your figures, then I think you have to use them.

(Continued on next page.)

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Q Are you aware that Mr. Carruthers did the same subtraction from that study area at this trial and came up with a figure of 177,000 acres?

A I'm not aware.

Q You have testified that the figure 235,000 people that you used in your Rio Rancho master plan was a capacity figure, is that right?

You testified just a few minutes ago, I believe you were talking capacity, not population projection, is that right?

A Yes, sir.

Q But it is true, isn't it, that what you actually wrote on your report on page 79 is, "Total projected population, 235,359"?

A If you are going to read the whole page, you have to say tabulation of proposed land use and within that tabulation is this projected population, which is the population that could be accommodated in that land use plan and we show the acreages necessary to do it.

Q But that was the population that was being projected?

A Yes. But if you are using it in the same sense as Brasher projecting population for Albuquerque, that is not how it was developed.

Q You have testified just recently that 80 percent of Paradise Hills is on the escarpment and cannot be developed, is that right?

A About that, yes.

Q And when you showed us where the escarpment was, you drew your pointer there (indicating)?

A Yes.

Q Would you like to step down here?

With your pointer in that position, half of the golf course you have just eliminated, isn't that right?

A What?

Q Half the golf course is west of the line you just drew by your pointer.

A That is part of the reason the golf course is there, because they couldn't get utility lines, so they made a golf course.

Q What about all these houses that exist within this red line? That is Paradise Hills?

A These are the houses that they started to build and they had to blast and once this first phase was done they stopped and now they are just selling lots, which is a shame, but that's what they are doing.

Q Isn't it true that most of the development on Paradise Hills that you can see on this photograph is west of the golf course?

A I think what I pointed out when I was talking about this, if you look here you see the escarpment going back and forth --

Q Yes.

A The escarpment is here likewise and it is underground and that's why they didn't know it was there until they started to blast for utilities. As they got down into here it is ins and outs and I am not going to sit here and delineate the escarpment exactly, because I haven't dug it out and neither has anyone else.

But it is in this area, the golf course has gone over that area. There is limited residential here, but there is no longer residential building taking place here because of the escarpment.

Q But that is where the residential development of Paradise Hills is, west of the golf course?

A Yes, sir, it is part of it.

THE COURT: You keep saying, "That's where it is," and the witness keeps saying, "That is part of it."

I don't know what the record is.

Q Can you show us on this map where there is residential development at Paradise Hills east of the golf course?

A There isn't any east of the golf course.

Q Thank you.

You say now that 80 percent of Paradise Hills is unavailable for development, is that right?

A Yes, sir.

Q Yet when you did your 1963 report, you didn't say that 80 percent of Paradise Hills was unavailable for development, did you?

A I said 80 percent of Paradise Hills was master planned for development.

Q That's right.

A They hadn't tried putting in sewer lines in then, either.

Q And you didn't say that a large portion of Volcano Cliffs was unavailable for development, did you?

A That's right. I was not doing the master plan for them, either.

Q You testified on direct that you were projecting a population of one million by the year 2000 and the other projection that you were using was the projection of 825,000. Is that right?

A I was not using. I simply pointed out that the 1985 land use plan of the city and the Wilber Smith Albuquerque Transportation Study both used the 825,000 projection and that within the framework of either that projection or the projection that I made, that I felt comfortable in saying that that area would develop by the year 2000.

Q You don't say that 825,000 projection made by Brasher or -- who else did you say?

A The Albuquerque Transportation --

Q Back in 1963.

A That's right.

Q You don't consider that an accurate projection today, do you?

A I don't consider that to be that by 1985.

By the year 2000, it might well be.

Q So with respect to the year 2000, and I believe you testified to this on cross, that you haven't consulted any other projections for the year 2000, and you have just arrived at this opinion based on your own observations, isn't that right?

MR. ARKIN: That was on direct and cross examination before, your Honor. It is not proper recross. I object.

THE COURT: Sustained.

You said limited recross examination.

MR. KAUFMAN: I have no further questions, your Honor.

MR. ARKIN: Thank you very much, sir.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Next witness.

MS. CROSS: Steven Springer.

MR. DEVORKIN: Your Honor, before the witness comes up, can we have a side bar?

THE COURT: Yes.

We will have a recess.

MR. KAUFMAN: Your Honor, one further matter, before the witness leaves.

THE COURT: The jury may have a recess.

(Jury left the courtroom)

MR. KAUFMAN: Your Honor, before Mr. Yguado is excused, I had brought up the matter this morning of the additional zoning report that we were awaiting.

Mr. Arkin told me when we came back from lunch that it just arrived.

I haven't looked at it yet because Mr. Arkin --

THE COURT: Have Mr. Yguado remain until tomorrow before he returns, Mr. Arkin.

MR. DEVORKIN: Your Honor, with respect to the witness or two witnesses that are about to be called, I believe these are the people that have to do with the computer runs that were produced this morning.

THE COURT: Yes.

MR. DEVORKIN: I just want to make one point and I have one request.

We have received hard copies of what purports to be computer runs, two computer runs for the end of the fiscal year 1974 and we have a microfiche of what purports to be similar computer runs, two of them, for fiscal year 1973 which the defendants intend to offer.

I went back to my office this morning and looked through our computer files produced during the grand jury proceeding and looked through this hard copy and tried to review it.

I would request that before these people at least finish their testimony, before I have to cross examine them, that we have a hard copy of this microfiche, or I have sufficient time to have somebody sit down and actually copy all the names and numbers so I have something to work with when I cross examine.

It is extremely difficult not having had the time to go through the microfiche and review what is on here to conduct an examination of a witness based upon --

THE COURT: What is this 1974 computer run, Ms. Cross?

MR. ARKIN: Ms. Cross will handle that. She is my computer expert.

MS. CROSS: The 1974 computer run also comes from microfiche, but the microfiche machine at Rio Rancho broke down and they could not print up the 1973 so they brought the fiche itself with them.

I have not had an opportunity since they got in so late last night to get it printed.

There are only two pages from it which I wish to offer which I showed to Mr. Devorkin this morning.

The categories are identical to the categories on the page which is blown up. Only the figures are different.

THE COURT: What is it?

MS. CROSS: It is a compilation -- Mr. Devorkin has my only copies.

Do you have the fiche one, too?

MR. DEVORKIN: Yes,

(Handing)

MS. CROSS: It is a compilation of sales.

This has to do with statistics on dinner parties.

The number of parties that were held, the average attendance per party, number of people who attended per party.

The other sheet has the average number of sales per party.

That is the major figures that we are interested in, the fact that the average number of people year to date who attended the party in 1974 were 10.54 -- that is units, if you will -- and the average number -- average sales volume per party for that same period of time is 1.09.

MR. DEVORKIN: Your Honor, there is a lot of other data --

THE COURT: Was it to show at a party you only made one sale?

MR. FLEMING: Pussycats and not tigers.

MS. CROSS: There has been a lot of claim here, if you will, of very high pressure sales, and yet nine out of ten people picked up and walked out of parties and did not buy.

THE COURT: That is 1974, 1973?

MS. CROSS: Yes.

THE COURT: And what else? Just those two years?

MS. CROSS: Those two years for that. They don't have any computer runs for prior to that.

After that you get into the problem of the bad publicity with the indictments.

The only other thing that we seek to introduce into evidence are two customer lot analyses that were made on the 6th of January of 1975.

One is of residential lots and the other is of all lots -- 1977, I'm sorry, the 6th of January, 1977.

That is to show that, for example, the paid in full -- they are divided in two, the paid in full and active -- on the paid in full, 57.59 percent of the purchasers of residential property at Rio Rancho own one lot, another 26.94 percent of the paid in full purchasers of lots own two lots.

THE COURT: When you say lot, you mean half acre?

MS. CROSS: Lots.

MR. DEVORKIN: No, it doesn't necessarily mean a half acre.

THE COURT: I gather from what I heard here a lot is a half acre.

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MR. DEVORKIN: It does not have to be, your Honor. There is a range of lots of sizes.

THE COURT: I don't know what that means, a range of lots.

MR. DEVORKIN: Well, for example --

THE COURT: Wait a second.

It is meaningless, Ms. Cross. If a lot can be five acres or a half acre, it doesn't mean anything.

MS. CROSS: The residential one, which does not include ranchette, commercial or multiple dwelling --

THE COURT: That means how many? Is a lot a half acre, is a lot an acre?

MS. CROSS: Statistics --

THE COURT: Is it mixed?

MS. CROSS: It is mixed.

THE COURT: If it is mixed, do you have to divide by two?

MS. CROSS: It is mixed. However, there is another computer run which I had not intended to introduce but if we get into this of 75,739 lots sold, 43,577 are half acre lots, 4,682 are under a half acre, 7,371 are from half acre up to .999 acres, 20,109 are one acre or more.

THE COURT: All right.

You better give them that underlying figures, because merely saying a person owns one lot without designating what a lot means seams to me to be meaningless.

I could have bought two half acres contiguous and as far as I am concerned I made two purchases because I gathered you were selling them at half acre lots at the dinner parties.

MS. CROSS: If they were plotted as half acres, that would be called two lots.

If it is plotted as one acre lot and you bought one lot, then it would be one acre.

THE COURT: This certainly does not come through the testimony.

MR. FLEMING: If I am correct, Ms. Cross, if I am correct, if a person bought two half acres, it would be two lot holders, am I correct?

MS. CROSS: Yes.

THE COURT: Yes.

But if I buy an acre and a half and you consider it one lot and if I buy a half acre, they are not the same.

My impression of the testimony to date is that the land sold at the dinners was sold in half acre lots. That's my impression.

MS. CROSS: That is basically correct for the overwhelming number of lots.

MR. DEVORKIN: It is most of it. As Ms. Cross said, other lots were also sold that ranged up to an acre, an acre and a half.

THE COURT: And she says she has the breakdown by half acres, et cetera.

MR. DEVORKIN: That is a different document than the one she gave to me this morning.

THE COURT: She is going to show it to you.

Now, what do you need?

MR. DEVORKIN: We have switched around to a different document.

On this document that we are talking about now, your Honor, the lot analysis, there already is in evidence the same document for the period before the indictment up through, I believe, July 1975.

It is a government exhibit.

It shows the same thing.

I don't see that we need --

THE COURT: Ms. Cross?

MR. DEVORKIN: -- other documents after the indictment which may or may not be probative of anything.

THE COURT: She is not offering anything

after the indictment, she says she is offering 1973 and 1974.

MR. DEVORKIN: No. We are shifting now.

What she is talking about now is the computer lot analysis and that is dated January 1977.

THE COURT: Let us start fresh so we are talking about the same thing.

Let's take the first two of which you have a hard copy for 1974 and a microfiche for 1973. All right?

MR. DEVORKIN: Yes.

THE COURT: Is that material in the evidence to date?

MR. DEVORKIN: I think there is oral testimony about what Ms. Cross has stated.

My dilemma, your Honor, is that I have hard copies of things which show a lot of other things than what Ms. Cross is alluding to this afternoon.

Now, this afternoon for the first time she tells me apparently I am only interested in certain data on these hard sheets, so I really was not prepared to respond to that.

If that is her limited offer, then we should-- well, without what these computer people are going to testify to about how this data was compiled and what the basis for it is -- I would reserve my rights as to that, talking only about assuming it is accurate and is it relevant to prove anything -- I suggest we know exactly which piece of data she does not want to offer on this sheet.

THE COURT: Are you offering the whole sheet for everything that is on the sheet?

MS. CROSS: I would be happy if you wanted to stipulate on the average number of people that attended a party for the year end figures and the average number of sales per party.

MR. FLEMING: There was testimony to that effect, your Honor.

MR. DEVORKIN: I am certainly willing to explore that possibility with Ms. Cross.

THE COURT: Wait. She says that is all the information she wants from those two sheets that you started off with your comments with.

MR. DEVORKIN: I am willing to explore stipulating with her, but to do that I think it is only fair that I be able to talk to the people who know where this data came from, what the basis for it is.

THE COURT: I thought you had been doing that.

MR. DEVORKIN: No, I haven't been --

THE COURT: What were you doing? I thought when you walked out of here today that was the purpose for it.

MR. DEVORKIN: I haven't been talking to witnesses. Generally speaking, we have not been able to talk to company witnesses.

If they will let me talk to them --

THE COURT: They said you couldn't talk to the experts. These people are the experts, are they?

MR. DEVORKIN: No. I wouldn't know. They are not on the list.

I would like to talk to them. I didn't suggest that this morning. Maybe I was wrong in assuming that I couldn't.

THE COURT: Why don't you go in and talk to them about that, Ms. Cross?

Now that there are two other computer runs, I gather -- are we finished now with the first two computer runs?

MR. DEVORKIN: Can I make one other point?

THE COURT: On the first two computer runs only.

MR. DEVORKIN: Yes, yes.

I believe there should be another run like this or data like this for ATC, which is a defendant in this case, about selling in this New York area.

I don't have it, but this is a run for all brokers. I am reasonably sure there are runs for individual brokers.

I would like to explore having that data also in front of the jury in my conversations with these gentlemen, if your Honor permits it.

THE COURT: What is the purpose of that?

MR. DEVORKIN: This sheet or this data is intended to give a view with respect to what the figures were nationally, averaging out all offices.

THE COURT: This is a national prosecution, isn't it?

MR. DEVORKIN: Yes, that's true.

THE COURT: This is not a New York State prosecution?

MR. DEVORKIN: That's true, I agree with it.

ATC is a defendant and we have had a lot of testimony about its success. It was the most successful and the largest of the brokers, and I think it would be appropriate to see whether ATC's figures show a difference from the national figures and I would just like to explore that.

THE COURT: All right, you may explore it with Ms. Cross and the witness.

MR. DEVORKIN: I am done with those two.

THE COURT: Now we go to the other two computer runs, Ms. Cross.

What is the objection to those two?

MR. DEVORKIN: Government Exhibit 887, your Honor,is a computer run just like at least one of the ones Ms Cross is offering for total lots, both the paid in full customers and the active because --

THE COURT: Have you spoken to Ms. Cross about this?

MR. DEVORKIN: Yes. We showed it to her.

MR. FLEMING: It was not on the exhibit list.

THE COURT: Now he says since it is already in evidence, why introduce it a second time?

MR. FLEMING: I tend to agree.

May I see it?

MR. DEVORKIN: It is dated April 30, 1975, your Honor.

(Pause)

MR. FLEMING: If this is in evidence, I think

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it is sufficient.

THE COURT: All right.

MR. DEVORKIN: Okay.

THE COURT: Does that take care of the problem, Ms. Cross?

MS. CROSS: Yes.

THE COURT: All right.

MR. DEVORKIN: I will speak with the witnesses now, your Honor.

THE COURT: How much time do youthink you are going to need with them?

MS. CROSS: It is only one statistic, I think.

THE COURT: What?

MS. CROSS: It is that one -- we are discussing, as I understand, whether or not we can arrive at a stipulation on the figure of the average number of sales per party and average number of units that went to the party.

THE COURT: That's right, and the existence of a separate run for ATC.

MS. CROSS: Right.

THE COURT: All right.

Do you want to go in and talk and let me

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know in ten minues how far you have gotten?

MR. DEVORKIN: Yes, your Honor.

(Recess)

(Adjourned to January 11, 1977, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jose Luis Yguado (Resumed)		6946	7003	7050

EXHIBIT INDEX

Government	Identification	In Evidence
2010	6978	6978
2011	6982	6983

Defendants Howard Friedman and Henry Hoffman	Identification	In Evidence
KH	7003	7005
KI	7018	
EI		7023

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 11, 1977
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

What happened, Mr. Devorkin, on this stipulation?

MR. DEVORKIN: The government cannot stipulate. We think the documents are not complete and the witnesses don't have complete and accurate information in order to testify to get them in. I think we have to examine then on the stand.

THE COURT: Ms. Cross.

MS. CROSS: These are computer runs. We have here the man who is in charge of the computer at Rio Rancho. We have stipulated to numerous computer runs on behalf of the government and I must say I am a bit surprised at this point that we don't get any res prosequi whatsoever from the government in terms of computer runs.

If there is an inaccuracy in these computer runs, which is I gather what Mr. Devorkin is hinting at, then there would be a similar inaccuracy in all the computer runs the government has put in evidence.

THE COURT: What is the error?

MS. CROSS: Is there one, Mr. Devorkin, an error?

MR. DEVORKIN: First of all, these witnesses don't know how this particular information was generated. I talked to them yesterday. It is clear they don't know how these terms are defined in here. They don't know what is included in them. They don't know what parties or offices are included in them.

They don't even known what the word units means. In this context, they don't know whether units include number of people who attended or units.

The data also is incomplete. They have one month or one year or two years here, they don't have all the years before and there are occasions on these documents themselves that the years before the percentages were different or the figures were different, substantially different.

I don't think --

THE COURT: I heard yesterday they didn't have coputer information for the years before.

MR. DEVORKIN: I think I talked to the man and he indicated they did have information, but the information was sent back to New York rather than kept at Rio Rancho.

The sheet that I was handed this morning for 1973 for ATC indicates that there is information from the year before because it has a column called "Percentage this year to date to last year to date" so there is obviously a comparison of the last year to date.

In addition to that, there are already exhibits in evidence which indicated that these figures have been kept for all time for Rio Rancho.

We introduced some as a representative portion through Mandel and Zaknich, which were 360 through 363, which indicated the figures were constantly kept and they are different from the figures here for the years Ms. Cross wants to introduce.

We did not -- there were very few stipulations about computer records in this case. There was no objection when the government --

THE COURT: I am not worried about the past, Mr. Devorkin. I want to know what your objection is to the exhibits you have in front of you. Let's get on with that. Don't tell me what went on before and don't tell me of your petty fights with the other side, I am not interested in that.

MR. DEVORKIN: Those are our objections.

THE COURT: Do you have the computer person here?

MS. CROSS: Yes.

THE COURT: Put them on and he will tell you where they come from. Did you speak to him?

MR. DEVORKIN: Yes, and he doesn't know how items are defined. He is not sure what categories are included in certain of these figures.

THE COURT: What do you mean what categories are included?

MR. DEVORKIN: For example, the word party is used in here. He doesn't know what parties are included in that figure.

He doesn't know whether it includes VIP parties, whether it includes Sunday USO parties, which had hundreds of people attending. He doesn't know whether it includes the OPC parties.

He doesn't know because, your Honor, he is not given that information. He is just given a sheet by somebody else with instructions to put those numbers into the computer. He doesn't know what the numbers stand for, how the terms are defined and he is not in a position to say what those figures mean.

THE COURT: I gather there are various types of parties, Ms. Cross.

MS. CROSS: Yes.

THE COURT: Are you prepared to represent that these cover all types of parties or only a single type of party?

MS. CROSS: I don't know exactly what kinds of parties they represent, but that is not in the stipulation that we sought, that is not the question that we were asking.

These are the only runs that are done on parties and --

THE COURT: You don't know what parties they are?

MS. CROSS: Dinner parties certainly, but whether they also include OPC parties, which are held at the property, I don't know.

THE COURT: That would make a difference, wouldn't it, as far as interpretation is concerned or the parties where you had the prior purchasers as opposed to fresh people?

MS. CROSS: They have here the number --

THE COURT: Let me see the exhibit.

MS. CROSS: Let me show you one set which is 1974 and they have on there, number of referral sales, number of HSO sales and gross number of sales, et cetera.

(Pause)

THE COURT: You have here average number of sales per party.

I gather Mr. Devorkin wants to know what do you mean by "party".

MS. CROSS: I might note that the government has put in already Exhibits 358 to 363, which appear to be roughly the same statistics only manually kept from the year 1968 for various offices. They have the same question there, average RSVP's per party. Percentage average units per party, average salesmen per party.

MR. DEVORKIN: If your Honor will recall, there was a witness on the stand who explained and was available for cross examination by the defendants if they saw fit to bring out various aspects of the figures.

MS. CROSS: These, your Honor, have the same terminology in these earlier manual reports which the government has turned in.

THE COURT: You say manual reports, you mean information that was kept manually as opposed to computer?

MS. CROSS: Yes.

THE COURT: Do you have anybody to testify that the titles were the same?

MS. CROSS: I think if you look at the categorization --

THE COURT: The name may be the same, but somebody has to say that on the computer we put it in the same as we put it in manually.

MS. CROSS: The question is whether or not this is a business record of the company.

THE COURT: Of course it is a business record of the company, but it is subject to varying interpretations and unless you can tell me what they are, then it has no probative value.

You made the same argument. The mere fact that a thing is a business record doesn't mean it has probative value.

Now, party can mean various types of parties and percentages can have a meaning depending on what type of party is involved.

MS. CROSS: Perhaps I can go ask the computer man about these manual sheets that they have because they seem to contain the same information which they then fed into the computer and the --

THE COURT: If it comes from a standard sheet and was put into the computer in subsequent years when you acquired computers what was compiled manually before that because you didn't have computers and he says that is so, he can testify to it and we will let them in.

MR. DEVORKIN: All I am saying, your Honor, is I would like the opportunity to examine the man before the jury to point out some of the things I am pointing out to your Honor.

If your Honor let's them in over my objection, I am still showing the jury, I think, fairly that they have to be careful how they look at certain statistics.

THE COURT: If he says that the gross statistics in '70 for average number of sales per party is figured the same way as average sales per party on the computer runout, what do you have to cross examine about?

MR. DEVORKIN: I am not sure if this man was around when the other -- worked for the company when the other exhibits that are in evidence existed. I think from talking to him yesterday, he simply receives reports with breakdowns from some other source, his superiors or some other branch of the company.

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He doesn't know, at least he said to me he didn't know how the terms on that sheet, whatever format the sheet took, were defined. He just took them as they were presented to him.

THE COURT: Ms. Cross says she wants to go and speak to somebody to see if they are going to say the terminology was the same in 1970 as it was in 1973.

MR. DEVORKIN: Can I go in with Ms. Cross?

THE COURT: No, let her find out first. It is her witness. You have no right to be present while she talks to her witness any more than you would let her be present when you talked to your witnesses.

MR. DEVORKIN: She was present when I talked to him.

MS. CROSS: Could I have my sheets back?

MR. KAUFMAN: Your Honor, I can report on the status with Mr. Yguado at this point.

THE COURT: Yes.

MR. KAUFMAN: We received the preliminary version of land use and zoning report last night and I studied it.

The report is made in conjunction with plates, which I guess are charts or maps or graphs, which are evidently part of this report since they are referred to throughout the report.

However, the plates were not included in the report that was provided to us and Mr. Arkin informs me that nobody knows where the plates are, if the plates exist.

MR. ARKIN: I don't. Nobody knows from the defense. I am sure somebody in Albuquerque might know, your Honor, but I have no knowledge of it and this is all we were able to uncover.

THE COURT: All right.

MR. KAUFMAN: Without the plates, the report is virtually worthless and, therefore, we have no need to further detain Mr. Yquado any longer.

THE COURT: All right.

MR. ARKIN: May I say one thing with respect to Mr. Yquado.

Yesterday, as your Honor will recall, we did that dance around the mosaic with the amounts of acreages and the witness said he was estimating and last night at my instance I had him measure with a ruler and make a very precise and careful analysis of the land in respect to the 1985 land use map and he has done that and he is ready if your Honor would permit him to go on the stand and give a precise calculation as to the amount of acres to be

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deleted.

THE COURT: What is he ending up with?

MR. ARKIN: I think we do a little bit better than we did yesterday, Judge.

THE COURT: 5,000 acres. That was my problem with Mr. Kaufman. Whether he wanted ten or fifteen makes no difference.

MR. ARKIN: 50,000 difference.

THE COURT: All right, we will put him on the stand.

MS. HYNES: Your Honor, the government had made an application a while back with respect to documents --

THE COURT: Privileged documents are ruled on by judges in Part I that were sealed and you will have an answer after lunch on that.

MS. HYNES: Thank you, your Honor.

The other matter that I would like to take up with the court at this time is that our original offer during our direct case with respect to films had three films involved.

One film was a film of the area leading up to unit 7, which is the even exchange area. The government would renew its offer just with respect to that portion -- that segment of the film, it is a very short film clip, and it does show unit 7.

There are in evidence in the defendant's case pictures of unit 7, houses in unit 7 that were taken close up and it doesn't give the relationship between that area and the other areas of the property.

The very short film clip that we would offer gives the relationship between unit 7 and the developed portion of the property.

THE COURT: Application denied. It is unnecessary. There is sufficient in this record for you to make comment cojn 2

to the jury.

MR. KAUFMAN: Your Honor, just to verify one thing. In view of the fact that Mr. Yguado is going to be called back, will I then be permitted to cross examine him, since he is going to be on the stand anyway, I may then refer to --

THE COURT: You told me you had nothing to talk with him about.

He is going on the stand for one purpose and that is to give exact figures as to what should be excluded from the 1985 land use plan.

Yesterday when he was making the approximations he said it would take him eight hours to do it and I said we don't have enough time for it. Whether he spent eight hours last night doing it, I don't know, but he has now come up with a specific. He is going on solely for that purpose.

You have said you don't need him. Are you changing your mind now?

MR. KAUFMAN: I said I didn't want to detain him for a report that I didn't think was essential. To the extent that he is now going to testify about land --

THE COURT: You can cross examine him on the specifics that he is now going to testify to, nothing else.

MR. KAUFMAN: To the extent that I can contradict that with what's in this report.

THE COURT: Of course, you may use that, but only to that testimony.

MR. KAUFMAN: Okay.

MR. ARKIN: A little minor matter, your Honor, before Mr. Fleming and Ms. Thompson have something to address your Honor on, which is we submitted to your Honor with two copies to Ms. Hynes our selecting out of the record what we consider to be aberrational comments.

THE COURT: I know, you will have that this afternoon.

MR. ARKIN: Thank you.

MS. HYNES: Will I have an opportunity to respond to that before your Honor rules?

THE COURT: You asked for that opportunity and you sent them to my chambers, didn't you?

MS. HYNES: No, your Honor.

THE COURT: Doesn't the record show you were to have time to submit -- I don't have it here.

MS. HYNES: Mr. Arkin wanted to argue it orally. You ordered Mr. Arkin to give me a list and that then I could respond. He wanted to put it in the record and I was going to respond on the record.

Right now we have the list and I am prepared to respond on the record, but we didn't submit anything in writing.

It is simply a list of the quotation with the citation to the page.

THE COURT: I thought you were going to submit something in writing. That was my intent.

Before I rule on it, you will be given an opportunity to orally talk about them by categories, not each individual one. At least from my reading of them I believe they fall into categories.

Mr. Fleming.

MR. FLEMING: Yes, your Honor. I had apprised the government about a stipulation and this has to do with the membership on AMREP's board of directors of a man from Lehman Brothers and the Chemical Bank. Perhaps there is no disagreement and we could work out a stipulation.

THE COURT: Are the reports in evidence?

MR. FLEMING: We haven't offered them. Are they in, the annual reports?

MS. HYNES: I don't believethey are, your Honor.

MR. ARKIN: No.

THE COURT: Do you want to stipulate and put that page in which shows the members of the board of directors?

MR. FLEMING: That's what I would like.

MS. HYNES: Your Honor, I don't know what annual report he is referring to. If he wants to offer one page of an annual report --

THE COURT: That's what I gather he wants to do.

MR. FLEMING: That's correct. As it appears on the report.

MS. HYNES: Your Honor, I would object. I don't know its probative value.

THE COURT: There are corporations which are defendants here and the jury is entitled to know who runs the corporations. Boards of directors run corporations. You have indicted the corporations.

MS. HYNES: Are you offering one or more?

Your Honor, Mr. Blum was the chairman of the board of directors and was a defendant in this case.

THE COURT: All right.

MS. HYNES: Your Honor rules that at the end of the government's case, notwithstanding Mr. Blum's position in the company --

THE COURT: He had no knowledge, that's true.

MS. HYNES: If these outside directors --

THE COURT: I assume the guy from Lehman Brothers didn't have knowledge either. That's why you didn't indict him.

That's not what it is being offered for. It is being offered to show who the members of the board of directors are of this corporation who you indicted.

MS. HYNES: If Mr. Fleming wants to argue from that that the state of their knowledge, I think he should put them on the stand and have them testify.

THE COURT: He is not arguing the state of their knowledge. He is just trying to show the character of the person who was running the corporation.

MS. HYNES: There is no proof that these outside directors were running the corporation. That's exactly the kind of arguments t t we are going to get into which I think we are going to need a live witness to find out whether they went to board meetings, what their participation was --

THE COURT: Objection overruled. If you don't stipulate he can read it into the record.

MS. HYNES: Your Honor, can we have a moment, please?

THE COURT: Yes.

(Pause.)

MS. HYNES: Your Honor, in connection with your Honor's ruling in offering the reading to the jury the outside directors, there is one other document that I think is relevant to that and the government would offer that document at the same time.

THE COURT: Show it to Mr. Fleming.

MS. HYNES: Your Honor, I can't put my finger on it immediately, but we will find the premarked exhibit number and we want to reserve our right to offer that at the same time.

THE COURT: What are you talking about?

MS. HYNES: Your Honor, there is a memo from a Richard Gangel and he talks about exploiting the outside directors such as Lehman Brothers, Chemical Bank to have them form an advisory committee and to meet every once in a while, maybe once a year, and to use those outside directors to bolster the -- the effect of the memo, I am not quoting from it, is to bolster the credibility --

THE COURT: Show it to Mr. Fleming.

All right, Ms. Cross, what is the answer?

MS. CROSS: These computer printouts contain information from all brokers. The format of the information that came to the computer people is not the same format that these are because Brokers' Services broke it down into a different format.

We would seek to offer the closing rate which has been defined by numerous witnesses in this case, the closing rate at -- the fact that these are parties, however you define parties, and what the closing rate is at parties.

THE COURT: What parties?

MS. CROSS: It doesn't matter. These are parties from all brokers.

THE COURT: All parties?

MS. CROSS: All brokers is the run that's done.

THE COURT: Is it all parties?

MS. CROSS: It includes all brokers.

Now, I don't know what parties you are referring to, whether or not it includes OPC parties, I don't know. OPC is not a broker, but that's a special kind of party that you are talking about held on the property as to which there has been testimony.

THE COURT: You say you are excluding those. What else is excluded?

MS. CROSS: This is information from the brokers on the parties that they henld that goes in to Brokers' Services. Brokers' Services sends it to the computer people.

THE COURT: Therefore is it frir to say that this includes all sales at parties, except those concluded eajb 9

at Rio Rancho itself?

MS. CROSS: So far as I know, yes.

The other run that I gave to Mr. Devorkin this morning that I would seek to introduce is one of ATC --

THE COURT: You know, I want to get an answer to one question before you take me down another one.

MS. CROSS: Okay.

Yes.

THE COURT: The representation is that these are all parties excluding those at Rio Rancho?

MS. CROSS: We don't know whether they included Rio Rancho or not.

THE COURT: You don't know?

MS. CROSS: I don't know.

MR. DEVORKIN: Your Honor, I talked to Mr. Springer, I think he is the gentleman involved, and he said to me in Ms. Cross' presence that he doesn't know what parties from the brokers these include, whether they include all or not. He doesn't have any personal knowledge of that.

THE COURT: What is the heading on the computer runout?

MS. CROSS: All brokers and it is "party." These are two computer runs that are done on parties and it is all brokers. They have specific computer runs for specific offices.

At Mr. Devorkin's request last night I got one of the computer runs for the ATC office, which is entitled ATC.

THE COURT: You say this is a compilation of those?

MS. CROSS: They get them from all the various offices around the country and they go into Brokers Services. Brokers Services sends them to the computer.

The ATC office, I think, is clearly admissible, that's ATC and you know who ATC is. We have had plenty of testimony on parties by ATC. They didn't run OPC parties so there's no question about that and we would seek to introduce just the closing rate from that.

THE COURT: Yes, Mr. Devorkin.

MR. DEVORKIN: A couple of things, your Honor. We don't know, because Mr. Springer doesn't know, whether this includes VIP parties, whether this includes RSVP parties, whether this includes Sunday parties, whether this includes special functions that were held. We have heard some testimony about brokers, but we don't know whether they included their parties in information sent to the national office.

In addition to that, Mr. Springer told me yesterday that he believed that the land sales office at Rio Rancho -- he believed, he didn't have personal knowledge of this, made similar reports to what he called the Brokers Services department at the administrative headquarters at Rio Rancho who then forwarded the total information to him.

So it isn't clear at all whether it includes property or not.

(Continued on next page.)

THE COURT: Ms. Cross, who has knowledge of how this computer works?

MS. CROSS: Mr. Springer has knowledge of how the computer works.

THE COURT: And who has knowledge of what is given to Mr. Springer to be put into the computer?

MS. CROSS: This was a program that was run a few years back. They stopped running it --

THE COURT: Somebody has to be available to testify what was put into the computer; the monthly reports from brokers which consist of -- somebody has to be able to say that, otherwise a computer run is useless.

I went all through this in the Howard Hughes' case with computer runs. Somebody had to take the stand and testify what was put in so you could interpret what came out, and if you don't know what went in, you don't know what comes out, despite headings on your runout.

MS. CROSS: Your Honor, I would note on one of these the heading is number of parties mailed, number of mail parties held, number of other parties held as to which the invitations weren't mailed out presumably, total number of parties held and it goes down and lists each of the categories.

Most of the terminology on this is familiar to us from the testimony in the case, such as the closing rates, and it would seem that that would be admissible for that purpose.

THE COURT: Unless you have somebody here who is going to tell us what went in from which those headings came from, you will not get those documents in. That is fundamental.

MS. CROSS: Well, he knows that it is information from all brokers that went to Brokers Services.

THE COURT: Has he seen them in? Is he the fellow who takes it and looks at it and puts it in the computer, or does somebody rearrange it first and then it is put into the computer?

If it is that, out.

You have got to have the person here who can get on that stand and swear, "We get monthly reports, here is a sample of it, we put that into the computer and, therefore, when we push a button to get out those totals this is what is coming out."

What heading you put on the computer thing doesn't mean a darn.

MR. FLEMING: Your Honor, we do not --

THE COURT: You put that heading on.

MR. FLEMING: We do not, I'm quite sure, have the person who put the information in the computer.

What we asked for was the information from the computer under this caption.

THE COURT: Unless you know what went in, Mr. Fleming, you don't know what comes out.

MR. FLEMING: I have trouble quarreling with that, your Honor.

We have just done the best we can do. We don't know the person who did it.

I might add there is corroborative testimony given by Zaknich or one of the original -- Mandel or Zaknick that approximately one out of nine or one out of ten units were sold per dinner, to his recollection.

THE COURT: If that is all it is, why can't you rely on a government witness in your summation to the jury? This is what the government witness said.

MR. FLEMING: I never rely on government witnesses, Judge.

THE COURT: To a jury?

MR. ARKIN: He doesn't rely on them now.

MR. FLEMING: I guess that is where we are.

THE COURT: If that is all it is for, I think we are wasting a lot of time.

If there is more to it than that, then I repeat, you are going to have to have the person here who put it in.

There must be a system for doing it, it isn't done haphazardly. Somebody sets forth a system and tells you what to do and you follow that system.

If you get monthly reports from the office, there is, I assume, a form of monthly report. I can't conceive that the offices or brokers send in their own type of form the way this operation was run. I would assume there was a standardized form for them to use to report their operations during the month.

If you have that, then you know what is going in.

MR. DEVORKIN: Your Honor, can I make one other point?

THE COURT: Wait. Mr. Fleming is in the middle of answering my question.

MR. ARKIN: Your Honor, Ms. Cross will speak to Mr. Springer for a few minutes and then we will have a more definitive answer.

I think your Honor has raised some questions which Ms. Cross will explore in depth with Mr. Springer and if we can't do it we can't do it.

MR. DEVORKIN: There is one other question so we are complete if we are going to get this stuff in.

The report that I got this morning for ATC for fiscal year 1973 shows a closing rate of 11 per cent.

However, the column just to its right says that that is 39 per cent of the figure for the year before, which means the figure for the year before is approximately 25 per cent. That was going to be the second basis of my objection this morning, that if we are going to have figures like this, we ought to be complete. We ought not to take one year, especially when we talk about '73-'74, to the exclusion of data that is available from years before. We ought to have everything before us.

THE COURT: I can't tell the defendants what to put in or what not to put in.

They are perfectly entitled if they wish to offer figures for 1974. I can't say they can't come in because they do not want to give 1968, '69, '70 and '71.

MR. DEVORKIN: Just in fairness and with an interest to expedite it, we would serve the corporation with a subpoena or ask your Honor to produce the other records so we can have a complete record on it, because certainly the government would want to look at and decide whether to offer it to make the record complete.

THE COURT: Where is the ATC done, here in New York or at Rio Rancho?

gtjb

MS. CROSS: Rio Rancho. These are the ones that are on the computer, but these weren't done by the computer prior to the year 1973.

MR. DEVORKIN: But Mr. Springer says the information was kept in New York, just like the information for 1973 on was kept in Rio Rancho.

THE COURT: Do you have the information here for those prior years?

MS. CROSS: For the earlier years? No. I don't know where it is or how it is kept or if it is still kept.

MR. DEVORKIN: It may be --

THE COURT: Inquire and find out.

MS. CROSS: Okay.

THE COURT: A mathematician can figure out what 1973 was if you have 1974 giving you the percentage of increase or decrease over the prior year. They didn't teach that in any law schools.

MS. THOMPSON: Your Honor, we have a non-computer exhibit which we would like to offer in evidence.

They are three agreements pursuant to which the company acquired easements to land or to -- which had been controlled by the Santa Fe Railroad Company. They were previously shown to the government.

We would offer it.

gtjb

THE COURT: What are these?

MS. THOMPSON: These are the promissory notes which the company used to pay for the easements which they acquired from the Santa Fe Railroad.

THE COURT: Any objection?

(Pause.)

(Continued on next page.)

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MS. THOMPSON: Your Honor, we would also seek to offer the agreement pursuant to which this promissory notes were signed, and that is Government's premarked Exhibit 89.

I don't have a copy right here now, but I should have it in a few minutes.

THE COURT: Why don't you wait until you get it.

MS. HYNES: I am sorry, Ms. Thompson.

This is a promissory note which you are offering?

MS. THOMPSON: There are three promissory notes marked "Paid".

MS. HYNES: Your Honor, I am just going to need some time to read through these documents.

THE COURT: Sit down and read them while Ms. Cross is out.

(Recess)

(In open court - jury not present)

THE COURT: Let us get back to these documents which Mr. Devorkin is interested in.

MS. CROSS: Okay. We will not call the computer person. He cannot answer some of those questions.

THE COURT: All right.

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MR. FLEMING: Your Honor, we are also not going to put in the board of directors.

I read the memorandum. It obviously was never implemented. It is meaningless, but I am not going to confuse the record at this time.

THE COURT: All right.

MS. HYNES: I have looked at these agreements with respect to the Sante Fe options of the Sante Fe Railroad Company.

If options from the Railroad Company for the original parcel, the initial purchase of 55,000 acres, are offered,then I have no objection with respect to the offer of these for the additional purchase.

MR. ARKIN: They didn't have htem on the original 55,000, Judge.

In other words, as I understand the history of this particular thing, so I can make it perfectly clear, the Atcheson, Topeka and the Sante Fe Railroad had a floating easement over the 30,000 acre acquisition.

The floating easement was because they didn't know whether they were going to build the railroad.

If these people had to clear title, they had to acquire that easement or at least have it released from the Sante Fe Railroad, and what they ended up doing is to have that easement fixed.

On this map, for example, you see a very straight line if the railroad ever went to go would go, it can't float, so they were able to sell without the easement clouding the title. That was the whole point of these.

There was no similar floating easement with respect to the lower portion of the property, that is, the original acquisition. That's why we don't have those, Ms. Hynes. It just didn't exist.

THE COURT: All right. I see no objection to putting it in.

MS. HYNES: Your Honor, we have a lot of documents back in the office that relate to the acquisition of the land. I would just like to compare this against those documents over lunch and then I will be able to give an answer.

THE COURT: All right.

Does that clear everything up, except one thing:

Yesterday, at page 6927, line 18, Ms. Hynes says, "There are subpoenas outstanding for certain documents that have not been received yet."

I gather that they have been furnished.

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MS. HYNES: As I understand it, the documents have been furnished and they are still checking with respect to one purchaser.

THE COURT: All right.

Now that you have those documents, there were three sets, I gather -- right?

MS. HYNES: We have one set, your Honor.

THE COURT: One set, which is Pastor Schleibe?

MS. HYNES: That's correct.

THE COURT: They said Reverend Rupley didn't own any land.

MS. THOMPSON: Correct.

THE COURT: Is that still the representation?

MS. THOMPSON: Yes, your Honor. There is no record to indicate that he owned any land.

THE COURT: And then we have Caste.

MS. THOMPSON: They can't find anything under that spelling.

MS. CROSS: How is it spelled?

THE COURT: C-a-s-t-e the court reporter spells it.

MS. CROSS: I believe it is K-a-s-t.

MS. HYNES: If it is K-a-s-t --

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MS. THOMPSON: Ms. Cross apparently informed the computer people of that fact and that is also coming under K-a-s-t.

THE COURT: When will it be here?

MS. THOMPSON: By 1:00 o'clock, we hope.

MS. HYNES: At least with respect to the documents we received for Pastor Schleibe, we will be offering the original contract for Pastor Schleibe and correspondence by Pastor Schleibe to the company and the return letter back.

THE COURT: All right.

What else?

MS. THOMPSON: May we see it?

THE COURT: We are now talking about your redirect.

MS. HYNES: Your Honor, let me just raise one point that I think will come up on the defendants case still, unless they correct me.

The defendants have asked for the government to produce -- the government has the New York State Red Files. Those are files of New York State referred to as Red Files and certain memos that are in those Red Files with a view towards getting certified copies of the memos.

With respect to one memo which the defendants

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apparently will seek to introduce through a certified copy the government has prepared a memorandum of law which we will hand up to the Court and which we have served on the defendants objecting to the admission of that document without having a witness called.

Mr. Geller, who is the author of the memo, Harry Geller as opposed to Mr. Leonard Geller, who is manager of ATC, but Harry Geller is an employee of the Secretary of State's office, is presently an employee of the Secretary of State's office, is located at 270 Broadway, a block away from the courthouse, and is in the office 9:00 to 5:00. I spoke to Mr. Geller as recently as the end of last week.

In other words, Mr. Geller is certainly available for testimony and to be cross examined with respect to the contents of that memorandum.

THE COURT: Let me see it.

MS. HYNES: We hand up the memo, your Honor (handing).

THE COURT: I want the memorandum.

MS. HYNES: Yes,sir. It is attached to it as an exhibit, your Honor.

MR. ARKIN: Your Honor, I can shortcut this. We are not offering it.

THE COURT: They are not offering it.

MR. ARKIN: I didn't proffer it. Maybe that makes the ruling easier.

MS. HYNES: Are there any other documents that you are offering certified copies from the State of New York?

MR. ARKIN: I am offering no certified copies of anything from the State of New York or from any other state, no.

THE COURT: I gather you just have Mr. Flatow.

MR. ARKIN: No. I am not going to call Mr. Flatow.

THE COURT: You are finished now?

MR. ARKIN: I am going to put Mr. Yguado on and he will testify a bit.

THE COURT: No more documents coming in aside from the promissory notes?

MR. ARKIN: Just the easements.

MR. FLEMING: I am writing some now, your Honor.

THE COURT: Use your left hand.

All right.

What does the government have?

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MS. HYNES: Your Honor, we would offer the documents on Mr. Pastor Schleibe.

I haven't been able to get the documents that should arrive this afternoon, so I will look at those.

Your Honor has indicated that you will rule on privileged documents. We have not examined those, obviously, and don't know whether any of them would be or could be offered in a rebuttal case.

Your Honor, the certification from HUD, we did receive one certification which related to truth in lending, which was not the relevant inquiry.

THE COURT: You mean you are referring to what you reserved at the end of the government's case?

MS. HYNES: Yes, that's correct.

We have been told that we are getting the certification on the property report as opposed to the truth in lending documents. We hope that they will be in today.

THE COURT: If they are not, you are ou of luck.

(Pause)

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THE COURT: I gather, then, that you will finish today. Now let's make the schedule for the future.

MR. ARKIN: All we have is Mr. Yquado and I guess Ms. Thompson would like to read a paragraph or two from those easements we put in evidence and that is just about it.

THE COURT: You cannot read the easements because Ms. Hynes says she wants to compare them with the documents she has.

MR. ARKIN: I won't read them. As long as they are in evidence we can refer to them in summation.

THE COURT: We will be finished today.

MR. ARKIN: Yes, sir.

THE COURT: Let's make the schedule for the future. Do you want to have arguments tomorrow, which will be the 12th for motions?

MR. ARKIN: Yes, your Honor.

THE COURT: Summations on Thursday, do you want Thursday off to sum up or prepare your summations?

MR. ARKIN: Could we make a respectful suggestion.

Mr. Fleming and I have spoken about this. We have charges to submit to your Honor. We had hoped that your Honor would have a charging conference or a conference with respect to the requests on Friday and we could sum up Monday and/or Tuesday if that is required.

We would like to have, in other words, the weekend to prepare our summation is what it amounts to. We do have to get the requests done. We want to have your Honor's rulings on our requests.

THE COURT: Then if we have Monday, how much time do you want for summation, Ms. Hynes, you start off?

MS. HYNES: Your Honor, for the initial summation I would say that there are a lot of documents in evidence and a lot of reports and a lot of testimony that has to be reviewed. The government has not read extensively from documents in evidence in order to move the trial along.

However we do feel it is very important for purposes of summation to bring these documents to the jury's attention and to read from portions of them.

That being the case and also to review the testimony and that being the case, your Honor, I would think that the better part of a day would be taken up with the government's summation.

THE COURT: What do you mean by the better part of the day?

MS. HYNES: Your Honor, I think five hours.

THE COURT: The defense, Mr. Arkin.

MR. ARKIN: The order of the summations will be me and then Ms. Cross, Mr. Arisohn, Mr. Lavinsky and Mr. Fleming and I would think that I would need somewhere approaching three hours, about three hours.

THE COURT: Who is Mr. Arisohn going to represent?

MR. ARKIN: He represents Rio Rancho, your Honor.

THE COURT: Ms. Cross?

MR. ARKIN: Mr. Hoffman and Mr. Lavinsky the corporation and Mr. Fleming Mr. Carity and Mr. Daniel Friedman.

THE COURT: How much for Arisohn and Cross and Lavinsky?

MR. ARISOHN: Your Honor, for Rio Rancho I would need about a half hour.

THE COURT: Ms. Cross?

MS. CROSS: About fifteen or twenty minutes.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Half hour to three-quarters of an hour, your Honor.

THE COURT: Mr. Fleming?

MR. FLEMING: Your Honor, I would say the same as Mr. Lavinsky.

THE COURT: Rebuttal, Ms. Hynes?

MR. KAUFMAN: Two hours, your Honor.

THE COURT: That is too much. The whole purpose of the change in summations as contained in Judge Rifkind's letter which motivated this change is that the government puts everything on the table to start with. Rebuttal is short.

I have conferred with my colleagues in Connecticut where this system arose and they would allow you ten minutes per defendant for rebuttal and I would accept that rule and that would give you one hour. Get everything in on your direct. Rebuttal is what it is and it is short.

That will be the schedule, then.

We are going to have some time left over on Monday. Do you want to put Mr. Arisohn and Ms. Cross in on Monday?

MR. ARKIN: No, I do not, your Honor.

THE COURT: Ms. Hynes On Monday.

MR. Arkin, Arisoh, Cross, Lavinsky on Tuesday and Mr. Fleming on Wednesday and Ms. Hynes.

MS. HYNES: Your Honor, Mr. Kaufman will

handle the rebuttal summation.

THE COURT: All right, and the charge on Thursday. So I will charge on Thursday the 20th.

All right.

MR. FLEMING: So much for the eight month trial, your Honor, thank goodness.

THE COURT: I had pretail conferences here yesterday. I have scheduled a criminal trial for the 24th. I thought I could squeeze a civil trial in next week, but I doubt it. You are asking for too much time to sum up. I have a nice three day non-jury trial, but I am getting no cooperation from counsel.

MR. ARKIN: Your Honor, I have a suggestion --

MR. FLEMING: No cooperation.

MR. ARKIN: Tomorrow we are going to make some motions.

THE COURT: Maybe I can start the non-jury case Thursday afternoon if I get the charge through by lunchtime.

All right, are we ready for the jury?

MR. ARKIN: Sure.

THE COURT: Bring the jury in.

(Jury present)

MR. ARKIN: Mr. Yguado.

JOSE LUIS YGUADO, resumed.

DIRECT EXAMINATION

BY MR. ARKIN:

MR. ARKIN: May I proceed, your Honor?

THE COURT: Yes, go ahead.

Q Mr. Yguado, you recall yesterday you were testifying about parcels of land within the 1985 land use study which in your view should not be includable within computations of gross acreage.

Do you recall that?

A Yes, sir.

Q Then yesterday you made some estimates as to those parcels which should not be included.

Do you recall that also?

A Yes.

Q Did you do anything last night in order to make your estimates more precise?

A Yes, I was sort of bothered by those estimates and so I took a map --

THE COURT: You mean my calculations?

THE WITNESS: No, my estimates. Your calculations were correct.

THE COURT: Go ahead.

A You know, I was just really guessing at some of the large acreages so I worked on the map last night and this morning measuring with more accuracy the various areas.

THE COURT: These are the exclusions from the 1985 land use map?

THE WITNESS: Yes, the area, that green line.

THE COURT: That is found in what exhibit?

MR. ARKIN: In 60.

May I have this marked, please.

(Defendants Howard Friedman and Henry Hoffman Exhibit KJ marked for identification)

Q Would you tell his Honor and the jury just what it was you did last night with respect to your calculations?

A Well, essentially I took the map. I checked the outer periphery, the green line that is on the map. Then I took each of these areas that I felt had --

Q What map are you talking about?

A The '85 land use map and I marked out each of these areas and I measured it this way and I measured it this way and I calculated the number of acres in each of these areas.

Q How did you calculate them, Mr. Yguado?

A Well, you take the length times the width and you multiply that -- divide it by 43,560 which is the square feet in an acre and that gave me the number of acres.

Q Did you use the scale which appeared?

A On the map, sure.

Q Showing you KJ for identification.

Would you tell us do you recognize this?

A Yes, this is the 1985 land use map with a plastic overlay that I drew on to mark off the various areas.

Q Those areas which you marked off are what, sir?

A Those are the areas that are not developable or I felt shouldn't be included as part of the gross acreage.

Q Is this exhibit in your own hand?

A Yes, sir.

Q Did you make it up yourself?

A Yes, pretty sloppy hand.

Q But it is your hand?

A Yes, sir.

Q Is it accurate insofar as the acreages?

A Sure.

MR. ARKIN: We offer it.

MR. KAUFMAN: No objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit KJ received in evidence)

Q Utilizing this exhibit KJ, which is now in evidence, perhaps if you would stand next to me so I could hold it up for the jury, I don't think we have any tape, I will hold it up over here and you can stand to my side.

MS. HYNES: Do you want to put it on the back of this exhibit, just clip it to it.

MR. ARKIN: Sure.

THE WITNESS: Do you have some paperclips or tape?

(Pause)

MS. HYNES: There is an exhibit on the other side of that.

MR. ARKIN: We shall remove the staples and the holes will be very, very small.

Q Mr. Yguado, explain to his Honor and the jury what those various lines on that overlay are and what the area -- first of all, on that particular overlay and map what are the 212,000 acres?

A Okay. Essentially, I can lift this up, this is the original base map.

Q Is that the same thing as the green lined area on the large mosaic there?

A Yes, this green line, for example, comes here and here. That is this right here. It comes straight on down and comes across here and across into here and into here, here, here, here, here, here and up into here.

Essentially this yellow boundary line is the same line as this green line on the aerial photograph.

I used that line as the periphery, that was the 212,000 acres.

Q From the 212,000 acres, utilizing our Exhibit KJ, would you tell his Honor and the jury what parcels of acreage and how much they consist of you deleted or eliminated from the 212,000 acres?

A Okay.

Q Identify them as you do it.

A Okay. First I took this entire Area A and this is exactly the yellow line that is there. The plan shows development area underneath here, you can see a little green line. That is development area proposed in the plan. The green area and the white area outside of that are areas that are not developable.

THE COURT: What portion of Albuquerque is that called for the record?

THE WITNESS: This is Corrales. This is Rio Rancho right here.

THE COURT: This is to the right of Rio Rancho?

THE WITNESS: Yes, sir, it is adjacent to it.

THE COURT: Corrales, what we have been told is Corrales?

THE WITNESS: This is Corrales, yes, sir, and this is adjacent to Rio Rancho.

In any case, I took this large area total and then I subtracted from it the developable area within here and I came up with 3,955 acres of land in here that could not be developed.

I then went over to Area B, which is North Albuquerque Acres, and I did the calculation of North Albuquerque Acres essentially to the interstate. Interstate 25 is here andyou can see under here this platted area of North Albuquerque Acres so that was 7,714 acres for North Albuquerque Acres.

I then went over to the boundary --again goes out this way, this is the area above the 6200 foot demarcation line that the city uses for development. This is in essence going up to the top of the mountain.

(Continued on next page)

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Q Is that the ecological line?

A Yes, I am not sure what you are calling it, but the city calls it a demarcation line of 6200 feet.

THE COURT: This is to the area east of North Albuquerque Acres?

THE WITNESS: Yes, sir. It is part of the original Elena Gallegos grant which is in the Sandia Mountains.

This is the boundary of it. It is 8,475 feet.

THE COURT: Feet?

THE WITNESS: I mean acres, sorry.

Then I have a strip in here and this is essentially the strip that the city has acquired and is acquiring for park area on the east side at the very foothills of the mountains. This is 1,435 acres.

Area E consists of the military reservations in here, this is the Sandia Kirtland Base complex and there is the airport area and some state land in here so we took this as one large area and got 35,220 acres.

Area F is the state land that the state holds in trust for the university and that is 13,376 acres. That is to the interstate here and to the Isleta pueblo here.

G is a small portion of the Tijeras Arroyo. This other part of the Tijeras Arroyo is in state or federal land so I didn't take it out because a significant part of the Tijeras Arroyo comes through here and that's 803 acres.

This area H we can look at it underneath here, this is farm land area here. The city proposes this to be kept as farm land and it wouldn't be developed in any other way. That's 1,561 acres.

J, I skipped I because it gets confusing. J is this other piece of farm land in here. That's 689 acres.

K includes a portion of the Parajito grant, which is here, and part of the Atrisco grant in here which is not showing any development and there is no development in that area. That's 7,156 acres.

THE COURT: That's part of Atrisco?

THE WITNESS: Yes, part of Atrisco and part of the Parajito grant area. This is the line between the Parajito and the Atrisco grant and it is this area here.

Q Did the land use study deal with the entire area of Atrisco?

A No. You mean the entire --

Q Atrisco grant.

A No. The Atrisco grant goes way out.

L is sort of a confusing area because this is part of the Atrisco grant, but within this is the boundary of Snow Vista, land that had been master planned, so I did a calculation on the whole area. Then I did a calculation on Snow Vista and subtracted the Snow Vista area, which is about 3,000 acres, from the other and came up with 3,395 acres.

Area M is still essentially the Atrisco grant. I came north from 66 and quite a ways west of Coors where there is any indication of development or developable land in this area, including the Atrisco industrial park, which is out of this area. I came up with 6,972 acres.

Q Which you took out of the 212,000?

A Yes, sir.

This area, again on this map you can see pretty well the escarpment that comes across in through here, actually out of this, and I took this area and most of this is in city and federal and state ownership. For that reason and the fact of the base I felt it wasn't developable and that was 6,811 acres.

I took the western portion, here is the escarpment again coming across here, and I took the western portion of that area known as Paradise Hills and I took 6,536 acres.

So, in essence, and the final calculation was the area and although I feel that the whole flood plain is questionable with regard to development, in deference to Mr. Kaufman I used a half mile width and a distance of some 18 miles and came out with 6,336 acres.

Q The 18 miles is the length of the river?

A Yes, sir.

Q As it flows through that entire region?

A Yes, but I only took as far as the city showed. The river goes a little further and I could have maybe taken a little more, but the city shows green areas so instead of 20 miles I took about 18.18 miles instead of the full 20 miles.

Q How many cares altogether?

A 110,434.

Q Which you subtracted or which remain in the 212,000 acre study area?

A I subtracted that from the 212,000 acres.

Q What remains in the study area?

A Do you know the exact acreage, is it 212 even?

Q Use that, use 212.

A 212,000 minus 110,434 equals 101,566 balance.

Q Which in your view is all the land, accounts for all the land developable within the 212,000 acre land use study areas, is that correct?

A Not necessarily developable, but it is land within this area that isn't in a major block that I could pull out.

Q So it might even be less than that?

A Yes, there are arroyos and small restraints, but I couldn't pull those out. I am talking about the big thing. I am not suggesting --

Q Taking your particular figure without eliminating some of the arroyos and things like that, you end up with developable land in gross acres within the 1985 land use study area is how much?

A 101,566.

MR. ARKIN: All right.

THE COURT: What was through this study, the historical density for the gross acreage?

THE WITNESS: The city of Albuquerque generally is 5. Right now is 4.8 and it has up to 5.16 that I know about in 1960.

THE COURT: That's five persons an acre?

THE WITNESS: Yes, sir. Do you want me to multiply that?

THE COURT: No.

Does that mean, then, on your figures that about 20,000 people could only be accommodated in that area?

THE WITNESS: No, it is 101,000 times, it would be times five, so it would be 500,000 people.

THE COURT: I am sorry, I was dividing it.

There's a slight difference.

THE WITNESS: From my point of view, based on historical density, there would be a maximum of 500,000 people in that area.

THE COURT: All right.

You may cross examine, Mr. Kaufman.

MR. KAUFMAN: One moment, your Honor.

(Pause.)

THE COURT: Where is your I?

THE WITNESS: I didn't use an I.

THE COURT: Why? 689?

THE WITNESS: Yes, sir.

You see why I don't like to estimate.

XXX CROSS EXAMINATION

BY MR. KAUFMAN:

Q Mr. Yguado, what you have done is taken out from the study area, the 1985 study area, all the land that you say is not -- the major areas that you say are not developable, is that right?

A Yes, the major and obvious non-developable land.

Q After you do that, you then calculate the number of people that can be accommodated in that smaller area by using the gross density figure, is that right?

A That's right.

Q Now, the definition of gross density -- well, gross density includes both developed and undeveloped land in a total area, doesn't it?

A That's correct.

Q But you have taken out what you consider to be the undevelopable land?

THE COURT: Wait a second, Mr. Kaufman. Come to the side bar.

(At the side bar.)

THE COURT: Mr. Kaufman, the historical figure in Albuquerque depends on portions that are undeveloped. That's the whole point. You don't build block after block. In Albuquerque as it exists today in the so-called developed area, there are undeveloped portions and gross density takes whatever the area is.

You can't present to this jury that you are going to fully develop every single foot of ground. Your own witness testified they tried to do that with the fill-in and it was only 21 per cent successful in the last ten years.

MR. KAUFMAN: Your Honor, the testimony has been that you use the gross density figure when you are dealing with the entire area, the entire study area and the gross density takes into account the military reservation --

THE COURT: Arroyos.

MR. KAUFMAN: Not necessarily because Mr. Carruthers and Mr. Avellanet testified that when you are dealing with areas that you say are capable of development, you use the historic density figure of residential areas, which takes into account right of ways, roads, commercial uses.

THE COURT: So, therefore, you have to use that in the 212,000 which they claim are further developable.

MR. KAUFMAN: No, with respect to the 212,000 acres, as we can see it refers say to the military reservation which nobody is claiming is developable. That's why the historic gross density figure is used because there are big portions in there that can't be developed.

But once you lop off this section --

THE COURT: No, because that's lopping off 50 per cent of this. You are not lopping off 50 per cent of Albuquerque. I won't take it.

MS. HYNES: Your Honor, can I just add one thing for the record, please?

THE COURT: No, Mr. Kaufman is handling this witness.

(In open court.)

BY MR. KAUFMAN:

Q Mr. Yguado, since 1960 what has been the developed density in Albuquerque?

A I don't know what you mean by developed density.

Q Are you familiar with the phrase developed area density?

A Well, there are residential developed areas, commercial developed areas, apartment developed areas and all of those tend to have various densities.

Q Are you familiar with that phrase as it was used in the 1962 AMA X-Ray and Prognosis?

A I would have to look at it.

Q I direct your attention to page 44 which refers to densities and to page 45 which gives city developed density figures.

A I have never known it to be that high. Residential areas are usually about eight in Albuquerque.

Q That's what the AMA X-ray was reporting was 9.88 city density in 1960, isn't that right?

A Okay.

THE COURT: Is there a definition in that report as to what they are talking about?

THE WITNESS: They don't --

THE COURT: Let Mr. Kaufman answer it.

MR. KAUFMAN: Your Honor, on page 44 it states:

"Developed area density shows the relationship of population to the developed area as a whole."

I don't know if you want me to read the next one, gross residential density includes the total area of those parts of the community devoted to residential uses. It includes roads and utility estimates, but not commercial, industrial or public usage.

THE COURT: From that definition what do they show? The second one you read makes sense, the first one is meaningless at least to me.

Do they give you a figure for the residential definition?

MR. KAUFMAN: Your Honor, they only give figures for the gross which is the 5.16 and for developed which is 9.88.

THE COURT: But they don't tell you what developed is. They give you what residential is. Developed can be industrial, it can be a garage, it could be a gas station. Nobody even lives there.

MR. KAUFMAN: That's the point, yes, your Honor, it includes industrial areas.

(Continued on next page.)

THE COURT: You have a figure of 9 point something?

MR. KAUFMAN: 9.88, yes.

THE COURT: What do they call that?

MR. KAUFMAN: That is developed density.

THE COURT: What is their definition for developed density?

MR. KAUFMAN: What it says is, developed area density shows the relationship of population to the developed area as a whole.

THE COURT: What do they say?

That is saying developed area is developed area.

I want to know the definition of "developed area."

That definition says a developed area is a developed area.

MR. KAUFMAN: Your Honor, all I can do is read what it says here.

THE COURT: Then it is not helpful and the witness says, as I gather, he doesn't know what it means.

Q Mr. Yguado, how would you define "developed area"?

A I think I just said it depends on, you know, residential development or commercial development areas of the community apparently that are developed in one way or another, but I'm not sure that that's what they use.

Q Will you step down, please.

We are referring to your Section B, which is the area of North Albuquerque Acres which you eliminated.

A Yes, sir.

Q You eliminated --

A 7,714.

Q You took all of North Albuquerque Acres out right over to the expressway?

A Yes, sir.

Q And all the way down to the bottom of North Albuquerque Acres?

A Right. And the top of North Albuquerque Acres to the bottom of North Albuquerque Acres.

I didn't take this area west of the interstate.

Q You took out everything east of the interstate?

A That's right.

Q Are you aware you took out a portion of North Albuquerque Acres on which there is development?

A A small corner here (indicating).

Q Let us look at 1075.

You have taken out the development that exists in this red area, is that right (indicating)?

A Yes.

Q People already live there on the area you have excluded from being capable of development, right?

A Yes.

Q Area C is the area directly west -- excuse me, directly east of North Albuquerque Acres that you say is all above the 6200 foot line?

A That's correct.

THE COURT: Don't you think before you leave the North Albuquerque Acres area you need to show more than he excluded some developed portions?

How much did he exclude?

MR. KAUFMAN: Your Honor, if Mr. Arkin wants to get into the numbers with him, that is fine.

THE COURT: I think you have to.

MR. KAUFMAN: I just want to check to see how accurate --

THE COURT: If he left some out, let us find out if it was did he minus or was it a lot.

Q Have you calculated what the area of this development is in North Albuquerque Acres?

A I can measure it if you want.

THE COURT: Yes, measure it.

(Pause.)

A I would approximate maybe 400 acres.

THE COURT: 400 acres.

Go ahead, Mr. Kaufman.

Q You have excluded this area here where you say there are no houses, right (indicating) on the far eastern portion of --

A I will show you what I measured, if you want.

About a half mile by about a mile.

Q You measured it from that road there, but there are houses north of that road.

A All right. That is 300. That would be 320 acres and then I added a couple hundred more through this. I said about 500.

Q You say there are 300 acres in that box there?

A No, no. That box by this distance. Two inches by one inch would be a half mile by a mile and that would be 320 acres, so I estimated in this area would be another hundred or so and that would be about 500 maximum.

Q Can you measure for us the area that is defined by this red outline (indicating)?

A Yes. It will take a while, if that's what you want.

Q Please.

A Is the red outline defined as all developed?

THE COURT: I don't know.

Mr. Kaufman?

A Do you want me to just use your red line?

Q Yes, just use the red line.

MR. ARKIN: Wait. We don't know what the red line really is.

THE COURT: I don't remember what the red line is. Do you?

MR. KAUFMAN: We can take out Mr. Carruthers' testimony and read from it.

THE COURT: Well, find it. It's over a month ago.

MR. KAUFMAN: While we are finding that, can Mr. Yguado start the process of measuring it?

THE COURT: Yes.

(Pause.)

THE COURT: What have you taken out of the red area?

THE WITNESS: I have taken out about 3,000 acres, in that area, in that red area.

THE COURT: You mean instead of North Albuquerque Acres having 7,714 acres excludable, you are now reducing that to what?

THE WITNESS: Well, what happens, your Honor, is on this map they show North Albuquerque Acres over here, and on this map they show it over to here.

In other words, there is more acreage in North Albuquerque on this map than there is on this map, because this is an aerial photo and it only shows the lines that are paved in there. This reflects the platting so there is much more of North Albuquerque Acres to the east than is shown on here.

THE COURT: Supposing you take the 7,714 acres which you show on Exhibit KJ as representing excludable North Albuquerque Acres, Mr. Kaufman says --

THE WITNESS: KJ is this one (indicating)?

THE COURT: Yes.

Using that one, which I gather is an official map relied on in this case -- all right?

THE WITNESS: Okay.

THE COURT: Mr. Kaufman says that you have to put back some acreage because it has already been developed.

How much are you going to put back, the portion embraced within the red dotted lines?

THE WITNESS: I am still working.

It is very complicated because there are a lot of little squiggles.

THE COURT: I gather that. I think we can take a rough approximation and forget the squiggles.

(Pause.)

THE WITNESS: I see. I knew something was wrong, but I didn't know what.

About 2,000 acres.

THE COURT: All right. He would put back 2,000 acres, Mr. Kaufman.

Next question.

THE WITNESS: That includes, of course, the airport and the guide page that goes into that area.

(Continued on next page.)

THE COURT: I don't understand --

THE WITNESS: All of that area within the red line I'm not sure is developable, but that's the red line.

THE COURT: All right.

The airport is obviously not developable if you have an airport there.

THE WITNESS: Besides that, you have a glide path which you have to keep clear. There is a cemetery and they don't allow you to build where the planes come in.

THE COURT: Go ahead, Mr. Kaufman.

He now puts back 2,000 acres, which includes the airport and glide path.

MR. ARKIN: That is based upon the red line.

THE COURT: That's right.

Q Mr. Yguado, your Area C, which is the area east of North Albuquerque Acres, you said that was land that was all above the 6200 foot line.

A Yes, sir.

Q And you have included in that Area C the land --

A Above the 6200 foot line.

Q But it is also the land that is east of

North Albuquerque Acres and east of the Simms Property, right?

In other words, you have drawn a vertical line --

A Well, actually, the 6200 line is about right. This is about 6200 line and that's what I took, which is a vertical line here (indicating).

You see, the problem is North Albuquerque Acres on here, if you look at North Albuquerque Acres and say this is North Albuquerque Acres and stop, that is what it shows in this aerial photograph.

This aerial photograph only shows the lines that are actually cut into the ground. Okay?

In addition to that, there is this area that goes straight out that is North Albuquerque Acres that nobody has been counting, so that comes out into here.

Q That is the area in this smaller blue rectangle, right?

A Yes, sir. That is North Albuquerque Acres, also, according to this (indicating).

Q You will agree that this portion of land outlined in blue that curves out toward the foothills --

A Is not included. I didn't include that in

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my calculations.

Q That is developable land, is that right?

A With some restraints.

Q You are aware that master planning has been done for this portion of land?

A Just like it has been done up here (indicating).

Q In connection with Section F, the 13,000 that you have taken out as being state owned land, I believe --

A Yes, sir.

Q You are taking out the 11,000 acres, approximately, that is held in trust for the university, is that right?

A Yes. It is 13,376.

Q And I believe you testified you were aware that there was a proposal two years ago by Bellamah to develop 25,000 homes on that 11,000 acre parcel, is that right?

A A proposal to the state, yes, which was refused.

Q You know that the state has in the past sold large blocks of land for development, don't you?

MR. FLEMING: I object to that.

A No.

Q You don't know that?

A Not specifically.

MR. FLEMING: I object to that as irrelevant, your Honor.

THE COURT: Sustained.

MR. KAUFMAN: May this be marked 2012.

xxx (Government Exhibit 2012 marked for identification)

Q Can you identify 2012, Mr. Yguado?

A Yes. It's a preliminary land use and zoning study for Albuquerque, Bernalillo County metropolitan area.

Q This is that second report that you referred to that you did in conjunction with Harland Bartholomew back in 1963?

A That I worked on, yes.

MR. KAUFMAN: The government offers 2012.

MR. ARKIN: Well, your Honor, our only objection is based on what Mr. Kaufman said before we convened with the jury, which is that this report is a preliminar one and does not contain the plate and Mr. Kaufman used a word to describe it to your Honor.

THE COURT: I did not limit him to what he could use.

He can use anything that is proper on cross examining this witness on these statements that he made.

MR. ARKIN: No, I am not quarreling with that. I am only saying, your Honor --

THE COURT: Let him show it to the witness.

Why don't you show Mr. Arkin what you intend to use.

MR. KAUFMAN: At this point, I will show that.

(Pause)

MR. KAUFMAN: Your Honor, I have shown Mr. Arkin what part I am referring to.

THE COURT: Yes, Mr. Arkin.

MR. ARKIN: Well, your Honor, I thought we had agreed this morning that this was not a complete report and that is my problem.

THE COURT: But if it contains a statement which this witness wrote, when the rest of the document is complete or not is immaterial.

MR. ARKIN: Yes, your Honor, I agree with that.

THE COURT: All right.

Show it to the witness.

Show him the portion that you want him to read.

Q Mr. Yguado, I direct your attention to this bottom paragraph on the left-hand column on page 10 of Exhibit 2012.

THE COURT: Ask him a question whether it refreshes his recollection as to something or other, whatever may be in that paragraph.

(Pause)

Q Have you read it?

A Yes.

Q Does that refresh your recollection that it has been the policy of the state --

MR. KAUFMAN: Your Honor, I would like to offer this.

THE COURT: He may say he didn't write it, he had nothing to do with it, and that is the end of it if that is so.

THE WITNESS: That happens to be right, as a matter of fact.

THE COURT: What?

THE WITNESS: That is absolutely right, as a matter of fact.

Q What, that this report which you were a joint venturer, that you had nothing to do with it?

A That I didn't write it.

THE COURT: You know that isn't what I said, Mr. Kaufman.

Q Mr. Yguado, what was your involvement in the issuance of this report, 2012 for identification?

THE COURT: Turn it to yourself, Mr. Kaufman, and don't hold it up for the jury to read.

MR. KAUFMAN: Your Honor, it is just small type, but I will put it down.

THE COURT: I'm sorry, don't do that in this courtroom.

A It says in the cover letter of that report that I prepared the maps and I did the existing land use study for the area that we were planning, and that's essentially --

THE COURT: Do you agree with the statement he showed you?

THE WITNESS: No. I don't know of any land that has been sold by the state in that area.

THE COURT: Okay. That's the answer he gave at least five minutes ago.

Q You were not aware that it was the policy of the state to sell at auction any of its large parcels of land holdings?

A I don't think it is. I think the state sells land that it gets in taxes, small pieces, that they have put up for sale, but I have never heard of them selling --

MR. FLEMING: It is totally irrelevant to the issues at this trial.

THE COURT: Besides that, he has given the answer and he has completed that area.

Q You include in Sections K, L and M portions of the Atrisco Property, land, Atrisco land grant?

A Yes.

Q You say that portion is not available for development, right?

A Yes.

Q That is the same Atrisco land grant that you referred to in your report that you issued in 1963, Exhibit EK, of 50,000 acres being available, is that right?

A I didn't --

MR. ARKIN: Objection, your Honor.

THE COURT: No. He has gone through that with you on cross examinatio and he has denied the statement you just put in your question.

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Q That is the same area that you said in 1963 under Legend Item No. 4 and I quote from your report:

"Common lands of the Atrisco Grant, approximating 25,000 acres, north of US66 extending from the Rio Puerco Basin area to the St. Joseph Volcano area. This land is now under contract for surveying, preliminary to master planning and development on a broad scale for industry, housing, et cetera. Note: Not shown in this projection are the northwest mesa area nor the Atrisco Grant property south of US66. Approximating 25,000 acres, this portion of the Atrisco Grant contains the 3500 acre Snow Vista subdivision which has large areas now developed for housing."

That is what you wrote in 1963, is that right?

A That's right.

Q Are you familiar with the Westland Corporation?

A Yes.

Q Westland Corporation is a corporation formed to resolve the title problems on the Atrisco Grant, is that right?

A No, it was --

Q That is not right.

A It is one of the things they are trying to do, I guess, but that is not the reason it was formed.

Q Are you aware that the Westland Corporation has been in existence since 1967 or 1968?

A Certainly.

Q Mr. Yquado, in your Section L --

Q Yes.

Q -- and the areas outside of Snow Vista, just the areas outside of Snow Vista are the areas you excluded, right?

A Yes, sir.

Q In that area there is the easterly half of your box, which is L, you have traced over red areas of the 1985 land use map, is that correct?

A Yes, sir.

Q Those are areas that were planned for in the 1985 plan for development, is that right?

A That's right.

Q With respect to your portion M, you have done the same thing with respect to the lower right-hand corner?

A Yes, sir.

Q You have also done the same thing with respect to O, traced over --

A Some of the red areas.

Q Some of the red areas in the lower right-hand portion, is that right?

A That's right, yes.

Q This O is the area that comprises at least a portion of Paradise Hills that you say is not available for development, right?

A That's right. I excluded the developed areas in my calculations, if that is your point.

Q Is the developed areas of Paradise Hills included within your red outline?

A No, I do not think so, but in any case my calculations excluded it. Here is the golf course, this area here, and most of the developed area here. My red line covers this small piece right here, but it likewise doesn't cover an area in here.

Q The developed portion extends how far out from the golf course approximately?

A From where do you want me to measure?

Q Let's take the midway point.

A And the edge of the golf course.

Q From the far western edge.

A To here.

Q Yes.

A About a mile. To the end of the red line again.

Q It is a mile from the west edge of the golf course and the golf course kind of comes around in a semicircle from the eastern portion of the golf course how far does it extend?

A From this end here?

Q From the west end --

THE COURT: You said east end, Mr. Kaufman.

A It is a little over a mile and a half.

Q Are you saying that all of that area is not included within your red outline portion?

MS. HYNES: I can't hear the witness, your Honor.

A Okay, if you look here, this is the same point as here, right?

Q Right.

A If you measure here, we can come to what, this is a different scale. If we take from here to here, right, you have about 7,000 feet. A mile and a half is about 7,000 feet so itis about the same.

Q You are excluding the rest of Paradise Hills within the green line area, is that right?

A No, essentially up to about here. In other words, this area I am leaving in.

Q I am talking about westerly.

A Right. From about the golf course, the middle of the golf course west.

Q You are also excluding from this the areas of Volcano Cliffs that have been master planned above the escarpment; is that right?

A Above the lava flow, yes.

Q When you worked on this land use and zoning study, which is 2012 for identification, you were working in conjunction with the 1962 AMA x-ray and prognosis, is that right?

A Yes, to some extent.

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Q Do you recall that the 1962 study was utilizing a projected population figure I think of 667,000?

MR. ARKIN: Objection.

THE COURT: He is not making a correct statement?

MR. ARKIN: Not within the scope.

THE COURT: Sustained.

Q With respect to the 1962 study, how did the study area compare with the study area in the 1964 study?

A Are you talking about the X-ray Prognosis?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained. The only questions you can ask this man is going to his statement on why he excluded certain portions. That's all.

MR. KAUFMAN: May I make an application at the side bar?

THE COURT: No, you have had extensive cross examination of this witness. You had him Friday, you had the whole weekend to think of what you wanted to end up with on Monday and you ended up with him on Monday and you had him for several hours.

This is only on why he excluded certain areas. That is the limit of your cross examination.

Q Mr. Yguado, do you know what the colored areas on the 1985 land use map pertain to?

A In a general way. They are on the index and I use the index like everybody else does.

Q Do you want to use the index so you can tell us what those colors refer to?

MR. FLEMING: I see no relevance.

THE COURT: Isn't the document in evidence?

MR. KAUFMAN: Yes, your Honor.

THE COURT: All right, it speaks for itself.

MR. ARKIN: With the index.

Q Mr. Yguado, you are aware, are you not, that that 1985 land use map defines how the projected population of 825,000 people can be accommodated in that area, are you not?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. KAUFMAN: I have no further questions, your Honor.

MR. ARKIN: Thank you very much, Mr. Yguado.

THE COURT: You may step down.

(Witness excused.)

MR. ARKIN: Your Honor, with the exception of the documents we spoke about this morning that Ms. Thompson has, we rest.

THE COURT: Have they been marked for identificatio

MS. THOMPSON: They have not been marked.

THE COURT: Offer them to be marked for identification.

MS. THOMPSON: Can you give them one number and mark them A, B and C.

XXX (Defendants' Exhibits KK, KL and KM marked for identification.)

MS. THOMPSON: Your Honor, it is my understanding that the government will review the documents over lunch.

THE COURT: Right.

The defendants rest except for that?

MR. ARKIN: Yes, your Honor.

MR. FLEMING: Yes, your Honor.

THE COURT: The government?

MS. HYNES: Your Honor, we would like to have over lunch and then report back to the court.

THE COURT: All right, be prepared to proceed if you have anything after lunch.

See you at 2:00.

(Jury left the courtroom.)

MS. HYNES: Your Honor, I would like to ask if Mr. Max Flatou who was supposed to be called this morning by the defendants is still available and if so I would like to talk to him and make a determination on calling him on rebuttal.

MS. THOMPSON: I spoke to Mr. Flatou last night and told him to go home and as far as I know he has gone home.

MS. HYNES: I know there is generally a 7:00 in the morning flight and a 5:00 in the afternoon flight. Where was he staying?

MS. THOMPSON: He was staying at the Essex House.

THE COURT: You can call him. If you want him, have him here this afternoon. There will be no delay in the rebuttal because we have fixed a tight schedule.

(Luncheon recess taken.)

AFTERNOON SESSION

2:00 p.m.

(In open court in the absence of the jury.)

MS. HYNES: Your Honor, over the luncheon recess, we looked at the agreements on the options for the Santa Fe Railroad and compared it to the documents that we have back in our office.

The agreements that the defendants seek to offer refer to various options covering parcels of land purchased from the King brothers.

These options are depicted on this map, which is color-coded. The options here are options A, B and C, and the pink section is option A, the orange section is B and the darker section is C.

So we would ask to have this map introduced and we would offer the map so the jury can understand what the options are.

Without it, it is incomprehensible. It just gives a legal description of degrees and --

THE COURT: What difference does it make?

MR. ARKIN: I think that Ms. Hynes' offer is incomprehensible, because we are offering the Santa Fe Railroad payments that we made to them to move a floating easement.

It has nothing to do with these options.

THE COURT: All he wants to show is the amount of money he paid.

MR. ARKIN: To remove an eastment, Judge.

MS. HYNES: But it applies to certain land and the options --

THE COURT: It makes no difference what portion of the land it applies to, Ms. Hynes. He is offering solely for the amount of money he paid.

MS. THOMPSON: Exactly.

THE COURT: All right.

MS. HYNES: Your Honor, with respect to the government's --

THE COURT: Wait a second.

MS. THOMPSON: We didn't offer to move the three documents in evidence.

THE COURT: They are admitted.

XXX (Defendants' Exhibits KK, ML and KM, respectively, received in evidence.)

THE COURT: What else, Ms. Hynes?

MS. HYNES: Your Honor, the government will offer the Schliebe documents and mark them for identification now as Government's Exhibit 2013, a contract.

XXX (Government's Exhibit No. 2013 marked for identification.)

THE COURT: What is the date of it?

MS. HYNES: The date of it, your Honor, is April 10, 1963.

THE COURT: With whom?

MS. HYNES: It is a contract and reservation -- it is a reservation and purchase agreement Rio Rancho Estates, Inc., signed by Martin J. Schliebe and Ruth Schliebe. It covers three acres in unit 3 for a purchase price of --

THE COURT: I don't care about that.

That is one.

What else are you offering?

MS. HYNES: A letter on the letterhead of Rio Rancho Estates, dated July 6, 1971, addressed to Martin Schliebe from S.M. McLain, legal department.

XXX (Government's Exhibit No. 2014 marked for identification.)

THE COURT: Next.

MS. HYNES: A letter dated October 13, 1971 with a stamped dated "Received October 15, 1971."

The letter is from Martin Schliebe to Rio Rancho Estates.

XX (Government's Exhibit No. 2015 marked for identification.)

THE COURT: What else?

MS. HYNES: And the response to the letter that was marked 2015 is a letter dated October 18, 1971 on the letterhead of Rio Rancho Estates, addressed to a Martin J. Schliebe from Marianne Newman, director of customer relations.

THE COURT: Any objection?

MR. ARKIN: No, they are fine, your Honor. No problem.

XXX (Government's Exhibits Nos. 2013 through 2016, respectively, received in evidence.)

MS. HYNES: We will mark for identification 2017, two sheets of paper.

The first page is "shipping instructions from Larry Perlmutter," dated January 6, 1975.

There is a description RR-2724.

Attached to the shipping instructions is a reprint with the number RR-2724.

The shipping instructions are to Dan Monaco, ATC, A. Estrema-Roth (East Meadow)" and"J. Berry, SGR."

Then there is the name G. Smith on the first page.

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(Government's Exhibit 2017 marked for identification.)

MS. HYNES: This, your Honor, is a piece of material that was used as promotional material in the sale of Rio Rancho land.

The second sheet is the piece that was distributed. It is a reprint from --

THE COURT: You are offering them both as one exhibit?

MS. HYNES: Yes, your Honor.

THE COURT: Any objection?

MR. ARKIN: Yes, your Honor.

First of all, there is no showing it was used as promotional material.

Secondly, if your Honor please, it is a news article which, on its face, is rampant hearsay.

Thirdly, I might say to your Honor by way of the equities of the things, there are hundreds of newspaper articles. We would be happy, indeed, delighted to offer. We didn't because they are simply newspaper articles written by somebody at some particular time.

This particular article is dated November 19, 1974. There is no showing that any representations based upon it were made from November 19, 1974 to the present time.

It seems to me that either it is offered for the truth of it, which it cannot be because it is rank hearsay, or it is offered because we use it in some way and there is no proof of that, to the contrary.

It seems to me, you know, a welter of news articles which were passed around this corporation, to pick this thing out, which is nothing but news article, is just -- I can't see any basis at all for it coming in evidence.

(Continued on next page.)

MS. HYNES: Your Honor, first of all, it was shipped to ATC and to sales offices for distribution. That is the first sheet.

The B. Smith who appears on it, that is Barbara Smith, who is under subpoena and should be in the courtroom soon. She is Mr. Perlmutter's secretary. This is the material that gets distributed and this is the way it gets distributed.

The article is not being offered for the truth of it, it is being offered to show that the defendants anticipated the growth of Albuquerque to be 517,000 in the year 2000, and that this was distributed to their sales offices in connection with their promotional material.

There are other newsprints, indeed, in the film there are several newsprints which come up on the screen with respect to the growth of Albuquerque. This is a more recent newsprint that the defendants, indeed, were using.

We can put Barbara Smith on the stand and show that they did ship it to the sale office.

I think the first document is self-explanatory.

THE COURT: Two hundred copies?

MS. HYNES: If it was ten copies, the point

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is the defendants used it.

THE COURT: Objection sustained.

MS. HYNES: Your Honor --

THE COURT: Objection sustained.

You have made your point.

1975?

MS. HYNES: In 1975.

THE COURT: I said I sustain the objection, and you have had two opportunities to make your point, Ms. Hynes. That's enough.

What else do you have?

MS. HYNES: We have nothing else, your Honor.

THE COURT: All right.

Does the government rest?

MS. HYNES: We haven't gotten your Honor's ruling on privileged documents.

THE COURT: The government rests aside from that?

MS. HYNES: We haven't gotten in the latest mail the certified copy.

If another mail comes in at 2:30 --

THE COURT: We are here. You will get it. If not, the government rests. We are not sitting around waiting for the mail to come in.

I was told things were mailed two weeks ago, these HUD documents. That was around Christmastime. You told me then you couldn't get it because it was Christmas and the mails were delayed. We are now on January 11th.

I have read the documents which my colleagues have ruled upon previously in conjunction with the grand jury investigation. There are some 500 of them.

I agree with their conclusion, and I find that the ruling at the end of the government's case on defendants motions for directed judgments of acquittal do not change the fact that these documents are not admissible.

I gather and hope that we have covered all the documents.

My law clerk went through the miscellaneous index and personally went through the safe to make sure that he would pick up any envelopes that were perhaps not docketed.

For the record, I will show what I have examined.

The package of documents sealed by Judge Conner on January 23, 1975.

The package of documents sealed by Judge

Pollack on March 20, 1975.

The package of documents sealed by Judge Pierce on April 28, 1975.

The package of documents sealed by Judge Wyatt on May 8, 1975.

And the package of documents sealed by Judge Pierce on October 21, 1975.

I will reseall these and file them back with the clerk.

MS. HYNES: Your Honor, if I might just inquire on the record of Ms. Dacey, there was a time before which we began having these documents sealed that there were applications on attorney-client privilege and the documents were not sealed and given to the Court.

MS. DACEY: I think there may be one instance when the documents were not sealed.

I would have to go back and check. I don't know.

THE COURT: Bring them in tomorrow. I will look at them tomorrow.

I have gone through all these and if it is the same type of material as is here, they are privileged.

Do you wish to read any of these exhibits that were introduced by you, Ms. Hynes, just now, what

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we will call the Schleibe documents?

MS. HYNES: No, your Honor.

THE COURT: In view of our schedule, I gather I can excuse the jury until Monday.

MR. ARKIN: Yes, your Honor.

THE COURT: Is that correct?

MR. ARKIN: Yes, your Honor.

THE COURT: All right.

Bring the jury in.

(Jury present)

THE COURT: Ladies and gentlemen of the jury, I don't know whether you will be happy or unhappy to know that the case is now finished.

However, there are a number of things that have to be taken care of involving legal problems and preparation for summations.

As you understand, this case has been going on now about ten weeks and there is a lot of evidence, over 70,000 pages of evidence, counsel have to review in order to prepare their summations for you.

So you are going to be excused until 10:00 o'clock Monday morning. At that point the summations will start and we will go summations and charge and the case will be submitted to you when I complete my charge.

I should caution you now, as I cautioned you at the beginning of the trial, please don't talk to anybody about this case, don't let anybody talk to you about it between now and when we finish the summations and charge.

With that admonition, I will excuse you until Monday morning.

(The jury left the courtroom)

THE COURT: The only thing I have not ruled on yet is Mr. Fleming's requests.

Do you want to do this tomorrow in conjunction with the motions to dismiss?

MR. FLEMING: Yes, sir.

Your Honor is talking about the --

THE COURT: That list of -- what is that fancy word you used?

MR. FLEMING: Aberration, I think I said.

THE COURT: I think it was a different word.

MR. FLEMING: Idiosyncratic.

THE COURT: Yes.

All right. See you tomorrow morning at 10:00 o'clock.

MR. ARKIN: Your Honor, I believe my clients wish to be here, but if they don't wish to be here during the arguments, would that be permissible?

THE COURT: If they so request not to be now on the record.

MR. ARKIN: All right.

MR. FLEMING: They tell me they want to be here.

MR. ARKIN: They want to be here. Okay.

THE COURT: Pardon me?

MR. ARKIN: They want to be here.

MR. FLEMING: They told me they want to be here.

THE COURT: I will put it the other way. If they wish to be excused, they should put it on the record now.

MR. ARKIN: Okay, your Honor.

(Adjournment taken to January 12, 1976, at 10:00 o'clock a.m.)

end t
end day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jose Luis Yguado (Resumed)	7125	7137		

EXHIBIT INDEX

Government	Identification	In Evidence
2012	7152	7169
2013	7168	7169
2014	7168	7169
2015	7169	
2016		7169
Defendants Howard Friedman and Henry Hoffman		
KJ		7128
Defendants		
KK,	7164	7167
KL	7164	7167
KM	7164	7167
Government		
2017	7170	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 12, 1977
10:00 a.m.

(Trial continued.)

(In open court in the absence of the jury.)

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Yes.

Your Honor, Ms. Dacey has turned over to me four additional file folders of documens that were held privileged.

One folder contains documents held privileged by Judge Weinfeld, three folders contain documents held privileged by Judge Bonsal.

THE COURT: How come they weren't filed with the court?

MR. LAVINSKY: These were documents, I understand, that were not sealed and this was prior to the time that arrangements were made for sealing.

MS. DACEY: The judges did not order them sealed, your Honor, they just gave them back to us after they ruled upon them.

THE COURT: Hand them up.

I don't think this will interfere with what we have to do today, but I will go over them.

I would think if the fact record is the same on these as existed on the rulings by the other judges, and there were some 500 documents I read there, I doubt if there will be any change, but I have to read them, obviously, which I will do and let you know tomorrow what the story is on them. But I think that doesn't prevent us from proceeding this morning.

Incidentally, as to those documents that were sealed, I have resealed them, but I see no reason for the court to hold them.

Does anybody see any reason why they should still be held by the court and clutter the clerk's safe?

MR. ARKIN: We will take them back, your Honor.

THE COURT: I will give them back to you tomorrow after I have ruled on these.

All right, Ms. Hynes, I will listen to your argument on the list of portions of the transcript that Mr. --

MS. HYNES: Your Honor, I will start going down.

I agree with your Honor --

THE COURT: Wait. Let me finish my sentence.

-- that Mr. Fleming moved be stricken.

Do we have a clean copy for the clerk for the record?

MR. ARKIN: Your Honor, I know I handed one up to your Honor and I gave you --

THE COURT: I have it, but I have my markings on it.

MR. ARKIN: I gave two copies to Ms. Hynes.

I think that we are in the position --

THE COURT: Have another copy made and filed with Mr. Frezzo so the record will be complete.

MR. ARKIN: As a matter of fact, I am in the embarrassing position of not even having a copy to follow along with your Honor this morning.

THE COURT: I can't give you mine because I have notes on them.

MR. ARKIN: No, I am not going to look over your shoulder, your Honor.

Do you have your additional copy, Ms. Hynes?

MS. HYNES: Unfortunately, I don't.

MR. ARKIN: We will just --

THE COURT: All right.

MR. ARKIN: If we can identify it by paragraph number, then we can write it down.

MS. HYNES: Beginning on page 1, the motion to strike the testimony that Mrs. Hampe gave with respect to -- and I am paraphrasing -- that a friend came to her house who was selling Rio Rancho land and told Mrs. Hampe and her husband that the land was going up 5 or 10 per cent overnight and that the salesman was coming to the house that night in case they wanted to buy more land before the price increase and then they bought the second piece of land.

There is in evidence Exhibit 128-F, which is a letter to a customer saying, "Good news. There is a 10 per cent price increase coming. Please buy before the increase comes."

There are also bulletins sent out to the sales office which are Exhibits 991, 993 and 993-A, advising the sales people --

THE COURT: All right. That's enough.

The next one.

MS. HYNES: The next one, your Honor, is Mrs. Henry's testimony --

THE COURT: Give the page and line number for the record.

MS. HYNES: The page is, according to this list, page 268, line 22.

The questions quoted really follow questions by your Honor.

Your Honor was asking the witness --

THE COURT: Ms. Hynes, we can cut this short.

The question is, do you strike her testimony that she was told that the development would reach the lots in three to five years?

MS. HYNES: No, your Honor, because the question is, "On the basis of what you were told, what did you think with respect to when development would reach your lot," those are the cases on victims being given their impression on the basis of what was said to them, what they believed, and we have cited those cases to your Honor.

Mrs. Henry was saying on the basis of what she was told, this was her belief.

Your Honor, there was an objection to that question. Your Honor overruled the question.

THE COURT: That is not Mr. Fleming's objection. You are not addressing yourself to the basis of his objection, as I understand it.

Is that right, Mr. Fleming?

MR. FLEMING: That's correct, your Honor.

MS. HYNES: We do not have in the record --

THE COURT: Maybe you better tell Ms. Hynes or repeat for her what your objection was.

MR. FLEMING: Yes, your Honor.

Our objection is based upon those cases which say that such representations must be struck unless they are connected with the defendants on trial.

THE COURT: That's right. He is referring to the Barrett case, the Corlin case and the Pritchard case.

MR. FLEMING: That's correct, your Honor.

MS. HYNES: Your Honor, we are entitled to show what representations were made, whether they were representations that were authorized representations.

On the basis of this statement, Mrs. Henry is saying that on the basis of what she was told, on the basis of what she saw, it was her belief that the development would reach her lots in three to five years.

She is testifying as to what her belief was based on what she saw.

THE COURT: Those cases say they come in if she has a basis for the belief.

But Mr. Fleming goes beyond that and says, even though she may have that basis for belief, it cannot come in upon the completion of the case when you have failed to tie them up with authorization or ratification. That's what Barrett, Corlin and Pritchard said.

So forget the first part. I agreed with you that they could come in initially because of the cases cited in your brief and I agree with the cases. But we are beyond that.

MS. HYNES: I understand.

THE COURT: Where have you shown authorization as required by Pritchard in the Eighth Circuit in 1967, 386 F.2d 760?

MS. HYNES: Your Honor, what this would require would have been the corss examination of what was she basing that belief on.

They are moving to strike the end of the -- it was the court's inquiry, "What were you told" --

THE COURT: Ms. Hynes, you are missing the point.

MS. HYNES: If she is watching that film and listening to the speaker's presentation, the film was authorized by the company --

THE COURT: Nothing in that film would ever in any way lead her to believe that this would be done in three to five years.

MS. HYNES: Your Honor, based upon this record,

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which wasn't developed by the defendants through cross examination --

THE COURT: They don't have to. The burden is on you to show authority.

Did you read Pritchard?

MS. HYNES: Not before I came to court, your Honor.

THE COURT: You should.

MS. HYNES: Your Honor, I am familiar with the line of cases that say that a salesman's authorizations must be authorized or otherwise they don't bind a defendant. I accept that.

THE COURT: And Mr. Fleming says there is nothing in this record which has been brought out by you, which is your burden, upon which you can find an authorization for a salesman saying three to five years.

MS. HYNES: Okay. Then let me refer you to specific exhibits.

Exhibit 315 is a script of a speaker's presentation, and on page 10 of that script there is the following language:

"Here you see current market prices of an acre of land, a single acre of land, at Albuquerque today, anywhere from three to five to eight on up to eleven to

$12,000 an acre or more right next door to Rio Rancho Estates. The city has pushed out as far as Paradise Hills. You saw it in both films. Here is an acre, a community, that, five years ago, you could have purchased an acre of land for $600. The city has pushed out, it's developed. What acreage is left is $12,000 an acre or more."

In that script they are giving an example of five years ago what you could buy an undeveloped acre for, $600, five years later developed it was $12,000 and that the city has pushed out, and that is Paradise Hills, right next to Rio Rancho.

So on the basis of that which is in a speaker's presentation, a sales person could have made the statement that development could reach the property within -- the outside date here is five years.

THE COURT: All right.

Go on to the next one.

MS. HYNES: Okay.

The next statement on Mrs. Henry talks about the salesman's statement with respect to unit 10.

Here, your Honor, I would also refer the court to the statements concerning Mr. Davis, which is also set forth in this itemization beginning at page 3 and goes on to page 4, because the Henry investment involves unit 10, which was commercial property, which the contract shows was purchased in May of 1969.

That was commercial property in unit 10, and the sales person was Mrs. Goff.

Mr. Davis, beginning on page 3, also bought a commercial lot in unit 10. His purchase was later -- his commercial purchase in unit 10 was in 1972, in ipril of 1972.

Now, both Mrs. Henry and Mr. Davis -- I believe Mrs. Henry is from Westchester, Mr. Davis is from Long Island, Port Jefferson, it was Roth Realty, and Mrs. Davis would be ATC Realty, so they are two different brokers -- and they are both talking about when the property is going to be developed.

The statement with respect to Mrs. Henry is that it in unit 10 would be developing soon, and with respect to Mr. Davis -- Mr. Davis says, and this is three years later, "It was my understanding that this was going to be developed immediately, these lots. The next to be developed and then they were going into unit 10."

Those are two separate brokers, Roth Realty, ATC Realty, there is a uniformity there with respect to telling two people who were buying commercial property in unit 10 that that property is going to be developed soon.

On the basis of cases such as Ristover and Fabian, the uniformity of that presentation by two different brokers shows that that was, in fact, an authorized representation and the uniformity bears that out.

There is also another point to bring up with this, and that is with respect to Mrs. Henry, she bought in May of 1969 and the script in 1968 was 317, and that script states at the very outset, on the first page, when they are introducing the consultants at the table, they say, "All of them with a background in real estate and they are thoroughly trained in Rio Rancho Estates in Albuquerque, New Mexico, and they are most qualified to advise you in this area."

So that the speaker in the front of the room was addressing the sales people as people who were authorized to speak and qualified to speak about Rio Rancho Estates.

You have a similar representation being made by two different brokers over a time period both relating to unit 10, and also we have had testimony in this trial that there were training sessions that were held for sales people and here you have, again, two different brokers giving -- sales people in those offices giving similar statements to prospective customers and being held out to prospective customers --

THE COURT: Is there anything in those training pamphlets that would indicate this was a directive?

MS. HYNES: Your Honor, I am referring to testimony, I am not referring to manuals. I am referring to testimony --

(Continued on next page.)

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THE COURT: All right. Anything in the testimony?

MS. HYNES: Your Honor, I don't have a specific recollection of anyone talking about training with Unit 10. I am simply saying --

THE COURT: What you are saying is there was a training program and if you find two salesmen three years apart who made what you call a similar representation, it must have been given to him at a training program.

That is a non sequitur, Ms. Hynes.

MS. HYNES: I am not saying it must have been.

THE COURT: Go on to something else.

MS. HYNES: The next statement concerning Mrs. Henry is the one that begins at page 460.

This is a question that the defendants asked on cross examination saying, "Isn't it a fact that the sales person told you that the property could triple in twenty years?"

And the answer was, "She didn't mention twenty, but she says fifteen, she said about fifteen."

Basically, the defendants asked that question. They didn't get the answer they were looking for, they are moving to strike it. If they would have

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gotten twenty years they would have been satisfied with it.

The point is that was a question the defendants asked on cross examination and they are bound by the answer. They didn't get the answer they were looking for, but that is the answer.

THE COURT: Of course, that answer nullifies her answer on direct three to five years, doesn't it?

MS. HYNES: No, because she is talking about development as opposed to tripling in value; two different things.

THE COURT: You have linked development and increase in value simultaneous up above when you were arguing on Hampe.

MS. HYNES: No. I am talking about development reaching the property is one thing; how much the property is worth, whether it has tripled or doubled, is a different question.

THE COURT: Your argument on Hampe was the fact of increase in value allowed the purchaser to draw the inference that development would reach her lot in the period indicated.

Let us go on to the last one. The record will show what you said.

MS. HYNES: Hampe is a price increase.

THE COURT: Go ahead.

MS. HYNES: The next statement about exchanging into Corrales Heights, "That I could only have a quarter of an acre in Corrales Heights," that testimony was with respect to a trip that she made in 1971.

Exhibit 893-A is a memorandum from Marianne Newman, who was the director of customer relations to Hugh Hood, who was the property manager, dated October 29, 1971.

The memo states, the second paragraph, "Both Clarence and I feel there is virtually nothing we can do to support the exchange privilege, other than to reiterate that the only available area is Corrales Heights, and we have offered this as well as the fly and buy program."

So in 1971 there is an internal memo of the corporation saying that the only available area for exchange is, indeed, Corrales Heights.

THE COURT: Next page.

MS. HYNES: Now we come to Mr. Sader and his statements about being told that Rio Rancho was developing rapidly, between five, six, seven years it would all be completed and that he thought that with respect -- I'm sorry -- let me take that first.

Again I refer your Honor to the script on page 10, Exhibit 315, which refers to the property next to Rio Rancho being developed within five years, you could buy it at $600, you could sell it at $12,000, improved, that it is developed.

Also the script for the movie, which is 341, at page 9, talks about the fine adjoining neighborhood where hundreds of homes have been built in the past three years and, again, it goes on to an example of "Property like this," it says, "is a quarter of a mile from your doors," and they are showing the visual description of shots and land of development a half a mile from the Rio Rancho, but the text says, "A quarter of a mile from your doors. Ten years ago you could buy it raw at $100 an acre. Today improved it brings $6,000 an acre and up." Here it gives an example, raw land, in time improved land and that is in the film "Your Golden Future."

The next statement made by the sales person relating to Mr. Sader is, "You said that you were told utilities would be on your lot in what period of time?"

"Within a couple of years."

This is consistent with what Mrs. Henry was told when development would reach her lot three to five

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years, Mr. Reyes-Guerra also was told a time period that I believe was somewhere between three and five years, and there are other statements, I think, throughout here as we go along, your Honor, that support the statements that purchasers believed that development would reach their lot anytime within three to five years.

So that statement by Mr. Sader's sales person is not inconsistent and, in fact, is uniform with the representations made by other sales people to other purchasers.

THE COURT: Go on to Finnen.

MS. HYNES: I will just add to that, Mr. Morden was told something similar.

Mr. Finnen, "Were you told anything with respect to the ranchette exchange privilege and that it would be the same as Section 2?"

Section 2 was a residential piece of property that had an exchange right and the ranchette did not have an exchange right.

Mr. Finnen testified that he was not aware of that.

I think on the basis of the evidence --

THE COURT: Not reading the contract.

MS. HYNES: Your Honor, if you read that

contract, it took me a long time to figure out what it was.

THE COURT: He is the only one who so testified on ranchettes.

Go on to Greenberg.

MS. HYNES: Okay.

Mrs. Greenberg testified that she was told she was buying a piece of land in Unit 25 and that this was going to be for luxury houses.

I think this has got to be taken in context with what Mr. Geller told Mrs. Dewitt.

Mrs. Greenberg was told that in November of 1971, the contract that she purchased for that land is Exhibit 1306 and that was a contract entered into in November of 1971.

Mrs. Dewitt, in February of 1971, when she was on a tour, was told by Len Geller, who was the general manager of ATC and ATC is a defendant in this case, that Unit 25 was going to be the Scarsdale of Rio Rancho.

As a matter of fact, that testimony by Mrs. Dewitt is set out on page 3.

That is consistent with Mrs. Greenberg being told several months later that Unit 25 was going to be for luxury homes.

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Mr. Geller is the general manager of ATC, binds ATC, ATC is a defendant in this case, is a co-schemer with the other defendants and the other defendants would be bound by the statements made on behalf of ATC and made on behalf of Mr. Geller. Those statements ar consistent.

Again, you have Mrs. Greenberg, who purchased, I believe -- I believe she is also an ATC purchaser. So this is a sales person who works for Mr. Geller who is making that representation months after Mr. Geller has made a similar representation to a purchaser on the property with respect to Unit 25. Both Mrs. Dewitt and Mrs. Greenberg bought in Unit 25.

THE COURT: That takes us through the end of page 3.

You have also discussed Davis, right?

MS. HYNES: Yes.

THE COURT: What about Bonavisa on page 4?

MS. HYNES: Bonavisa testified that when she bought her commercial lot, she was told that somebody could, is the testimony, come along and maybe lease it for either a gasoline station or whatever because it was a corner property.

The commercial property -- and that is what

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she bought -- let me just -- yes. Mrs. Bonavisa bought commercial property.

Now, obviously commercial property was sold as property that could be used for a commercial purpose.

Also in the film you will recall that they mentioned the Winrock Shopping Center, and in the script -- I'm sorry, I think it is in the script -- in the script they refer to the Winrock Shopping Center and give the example that it is being leased at a certain amount per year.

So it is perfectly obvious that commercial property would be leased and there is nothing unauthorized about that representation.

Indeed, Mrs. Vives, whom defendants called, bought a multiple dwelling lot and said she bought it because she wanted to put a two family house on it and have it be income producing.

So there is no unauthorized representation about commercial property being income producing, and that is all that is being said by Mrs. Bonavisa here, and it is certainly, by defendants' own witnesses' testimony with respect to similar property, it was income producing and that's what she believed it to be.

Again, when we go to the next line by Mrs.

Bonavisa, the next line of questions and answers, this relates to a conversation with Mr. Geller, who is the general manager of ATC.

THE COURT: Forget that.

Go on to Fox.

That goes on to pressurization.

MS. HYNES: Fox talked about wanting to take it to a lawyer.

The Sid Hollander tape of the training session, your Honor -- and we have the transcript to follow with -- that transcript, at page 18, Mr. Hollander is training the sales people as to how to overcome objections and how to close.

On page 18 -- it really starts on page 17.

He says, "Because you know what's going to happen when dinner is over. You know when dinner is over and you start to fill this out," referring to the contract, "and then somebody's gonna say, oh, this is fine, but I want to think it over.' Or, 'This is beautiful, but I can't afford it.' Or, 'I'd like to talk to my lawyer.' Or 'I'd like to show it to my brother-in-law in Oshkosh.' You know that they are going to say one of those things, don't you? Because you have heard it many times before."

Then he says, "Now, if you know it is going

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to happen, is it not logical to overcome it at the dinner before you get to that?"

The sales people were trained to anticipate that objection and to overcome the objection and the specific example of taking it to the lawyer is given.

The obvious training that they were given was how to overcome that objection.

This is Mr. Fox raising the precise objection, "I want to take it to my lawyer," and being told by the manager, who is also somebody who would bind ATC, he is being told by the manager that he can't take it to his lawyer.

Based upon the training that the sales people received that is evidenced by that training script and the fact that this was the manager who discouraged him from taking it to the lawyer, that is an authorized act on behalf of ATC, certainly, and on behalf of the defendants in this case.

Mr. Hollander was not doing that sales training for ATC, he was out in Denver, I believe, so there is also a uniformity there.

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THE COURT: Get to James.

MS. HYNES: James, again this is a statement talking about the rate that Rio Rancho was developing; that it would be getting toward her area in five to ten years. This is again the script referring to five years and the sales script, which is 315 at page 10, and the film, Your Golden Future, which is 341, page 9, which specifically refers to the ten year time period.

The script refers to five years. The film refers to ten years.

This again is a situation where Mrs. James is giving the kind of testimony that we have heard earlier here by other witnesses. Again a uniformity of representations that are made to purchasers with respect to when development would reach her property.

She is being told this on the property, not back in New York, so there are both. You have the same representations being made on the property as are being made back in New York or in other parts of the country.

The next, Mols, again your Honor I rely on 893-A, which is the internal memo saying that Corrales Heights is the only available area.

THE COURT: That isn't the point of Mols.

MS. HYNES: Let me take a look at it again.

your Honor.

THE COURT: The point of Mols is that they told him that Unit 11 was filled up, which ties in with the statement in your indictment.

MS. HYNES: Let me just read this memo because there was a problem in Unit 11 which was the reason why there weren't lots available at a certain period of time.

THE COURT: I think there is no doubt that he wanted to exchange, you had to exchange into Corrales Heights and take a quarter of an acre instead of a half acre after a certain point, but if you wanted underground utilities and sewers instead of septic tanks, it was not an even exchange area.

This goes to something else. This testimony goes to the fact that he was told, Unit 11 was filled up which was an even exchange area, and, therefore, you had to go into Corrales Heights. He is the only one who so testified and I don't know of anything in this record which could tie up these defendants with that.

MS. HYNES: Your Honor, I would suggest that the testimony of Mr. Donovan Potter with respect to a memo that has been in evidence and I am not sure what the number is, but the content, and I will get it

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for your Honor, is that you should discourage exchanges into Unit 11 and that you should encourage exchanges into the Corrales Heights area.

That certainly could be taken by a sales person to tell a customer that there weren't lots available in Unit 11.

THE COURT: Give me the exhibit and I will take a look at it.

MS. HYNES: Okay.

THE COURT: That takes us to Sporzynski.

MS. HYNES: Your Honor, let me complete the argument and then find that memo. It may take a minute.

THE COURT: That is what I am looking for.

If you don't have that, it will go out.

MS. HYNES: Your Honor --

THE COURT: After I read it, I don't know whether it will go out or not.

MS. HYNES: That is an internal memo saying Corrales is the only available area.

THE COURT: That isn't the point that Mr. Fleming seeks to strike this testimony. He wants to strike it because you want to use it, I assume, to show that misrepresentation was made to people who wanted to make

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an even exchange and were told there is no land available for even exchange. That is why he wants to strike it. It is that misrepresentation because that ties up with several words in your indictment.

MS. HYNES: Your Honor, it could be that for a period of time there was no land available.

THE COURT: I am asking you to show me and you claim there is an internal memorandum, which would indicate that the salesmen were directed or encouraged to make such misrepresentation.

That is the only thing involved in Mols. Nothing to do with anything else. He wants Mols out because he is the only person who has testified to such a misrepresentation.

MS. HYNES: Your Honor, I will hand up 893-A.

Mrs. Henry also testified --

THE COURT: I am asking you, Ms. Hynes, what is this documentation. You said there are exhibits in the record. I want to see them.

MS. HYNES: 893-A.

Your Honor, the point with Mr. Mols is that Mr. Mols was told at the dinner that he had a right to have this even exchange and he had a contractual right set out in the contract.

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When he goes to do it, when he goes to exercise that contractual right for even exchange, he is told that there isn't any lot available for him to exercise that even exchange. That is supported by that internal memo.

THE COURT: Now, all I am asking is that the only one you have got? Do you have any other memorandum or exhibits? I have asked you that three minutes ago and you come back and give me this statement, which does not answer my question.

(Pause)

THE COURT: While Mr. Devorkin or somebody is looking for that document, go on to Morden.

MS. HYNES: Sporzynski, your Honor.

Here again we have, first of all, the testimony that they could expect -- purchasers could expect a twenty-five percent return on land per year. Indeed some of the literature says that land was increasing at three to four hundred percent a year or more. That appears, I believe, in "This is My Land".

THE COURT: Go on to Morden.

MS. HYNES: Morden, with respect to any time you want to resell we are going to help you, there has been testimony by sales personnel, Mr. Monaco, Mr. Masone, also the tour people, Patricia Miller, that Peter

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Miller made representations that there would be a resale office set up and that the company could resell the property.

Peter Miller was the vice-president of ATC Realty --

THE COURT: But his representation was that the office would be set up when they completed selling the initial purchase, not any time.

Your witnesses have testified that the statement made was that a resale office would be set up when the corporation completed the sale of the original purchase.

Mr. Morden says that he was told any time he wanted to sell, we will help you resell. Your witness said that isn't true.

THE COURT: Go ahead.

What other things on Morden?

MS. HYNES: Morden is again told that it would take three to four years before the development would reach his lot. Again referring to the five years in the script, Exhibit 315, page 10.

Mr. Morden bought that piece of land, Unit 13 in 1971, in February of 1971.

Again this is a similar representation

that has been made throughout the witness' testimony with respect to when they anticipated development would reach their lot. It is entirely consistent with representations that we have spoken about earlier.

THE COURT: Gray.

MS. HYNES: I will just mention that Mr. Morden also has Unit 25, commercial, and that is again the similar representations by Mr. Geller and other people with respect to development in Unit 25.

On page 10 Mr. Morden is also talking about income from his commercial property. The property that he bought in Unit 25 was commercial property, your Honor, and that he would have a good income from the commercial property.

That again is consistent with representations in the film about income from Winrock Shopping Center on leaving and just the common sense response of commercial property, income producing.

With respect to Mr. Gray, that the investment was guaranteed and there was no way he could lose, Mr. Gray bought in 1969 in April and in June of '69. Exhibit 317 is a script in November of '68 and at page 25 of that script it says the following:

"And I say to you, ladies and gentlemen, you pick the figure, you pick the amount that you are going to force yourself, that you are going to discipline yourself to put away every month to work for yourself yourself in as guaranteed and protected a program as you will ever find anywhere."

So the word "guaranteed" is used in the speaker's presentation at or about the time that Mr. Gray bought his property.

There are also statements in the promotional material about land, a safe and secure investment. There has been a great deal of testimony in this case that people believed that the representations that were made to them with respect to purchasing this land was a representation that land was always safe whereas stock was risky. A purchase of land was a safe investment you couldn't lose on it.

Mr. Reyes-Guerra, on page 10. Again, Mr. Reyes-Guerra is dealing with Unit 25. He says that he was told that utilities would be there anywhere from three to five years. There is really a consistency and a uniformity of representations being made to purchasers as to when they might expect utilities to reach their property. That ties in with the representations made in the script about raw land five years ago, five years later and improved, meaning with utilities, it would be worth a great deal more.

Now, Reyes-Guerra goes on to talk about that he expected that his commercial lots were going to be just like the area in Corrales Heights. When they developed his area, it was going to be developed in a way similar to Corrales Heights.

This is consistent with the representations that the defendants were building in a certain area. That this building was spreading out and that the film showed the building area and talked about how rapidly the property was growing and developing.

Certainly based upon the films that the people saw, when they went down to the property and saw the developed area and were told that development was expanding and going rapidly, they believed that the development that was being talked about was development similar to the development that was on the property at the time and, in fact, that their lots would be developed in a similar manner.

Your Honor, with respect, again coming back to Mr. Mols, the point being made with Mr. Mols is at the time he wanted to exercise his exchange right there was not a lot available.

The exhibit that I handed up to your Honor, which I think is 893-A, verifies that in 1971, and I believe that Mr. Mols moved to Rio Rancho at or about that time, there weren't lots in the even exchange area available. That memo says there were only lots available in Corrales Heights. That is the only thing Mr. Mols was talking about.

At the dinner he thought he could get a half acre and when he went to exercise that right, he found out that he could only go into Corrales Heights at that time. That memo says at that time there were only lots available in Corrales Heights and that is all Mr. Mols was saying.

THE COURT: Mr. Fleming or Mr. Arkin.

MR. ARKIN: Mr. Fleming will speak first, your Honor. If there is anything left to say, I will say it.

MR. FLEMING: On the Hampe representations, she is attempting to justify a verbal declaration that the property would increase ten percent in value or had increased. The price of land was going to increase by ten percent.

I see no relationship -- I have not seen throughout the trial any relationship to the company saying next month we are going to increase our prices ten percent and a consistent argument on the government's part that salesmen were saying that your land has gone up in value. The company did increase the price every time they said they were going to increase the price.

With regard to Henry, the only -- the argument that development will reach lots in three to five years, the only argument Ms. Hynes has made to my mind that merits any consideration is that, apparently, the same sort of thing was testified to by two or three witnesses.

There were 40,000 purchasers here. There were some, I guess eighteen or nineteen purchaser witnesses called by the prosecution and another six, seven or eight called by us.

The fact that two or three of the witnesses say the same thing was said to them does not make that an authorized declaration in my mind as a matter of law reflecting company policy.

There is nothing in company policy which would reflect authorization for such a declaration. In fact, the very contract itself which states that if utilities have not reached your lot by the time you decide to build, was a flat disclaimer that development would reach any acre at Rio Rancho at any particular time. I believe there are similar declarations in the property report.

Now, Ms. Hynes pays a great deal of attention to Exhibit 315 in which she tries to analogize development at Rio Rancho with supposed development outside of Rio Rancho. I don't see that connection to begin with.

Putting that aside, I think if your Honor will review the transcript, Exhibit 315 was a 1965 transcript and my recollection is that Mr. Mandel testified, I believe at page 699, he said he had no knowledge or was not certain that that transcript was ever used.

I think there is substantial question and we have a motion to strike that transcript in any event.

The Henry declaration on cross examination of tripling in price in fifteen years, I don't recall that testimony specifically. I am sure I asked the question because I think I was questioning and I wonder if the question was, "Did you not say" --

THE COURT: According to your memorandum, you uoqted it as saying, "Isn't it a fact, Mrs. Henry, that the only thing any AMREP representative or the only thing Mrs. Goff said to you about appreciation was that your property could triple in 20 years?"

MR. FLEMING: Exactly. That has nothing to do with three to five year development. In fact, it is inconsistent with any such representation.

THE COURT: Go ahead.

MR. FLEMING: Again the Seder representation, Rio Rancho developing rapidly, all completed within five to seven years, is of a kind. Ms. Hynes' argument is simply because Mrs. Henry said something like that was said to her, and Mr. Henry said it was to him, and a third purchaser said it was said to him or to her, therefore it becomes authorized company policy.

In a situation where you have 40,000 purchasers and 870 salesmen --

THE COURT: How many salesmen?

MR. FLEMING: 870.

THE COURT: 870?

MS. HYNES: That's not in the record, your Honor.

MR. FLEMING: I will take it back. In any event, with 40,000 purchasers that doesn't seem to me it ties those kind of declarations, three isolated instances, to any one of these defendants or to anyone in the company.

The argument that adjoining property was developed within a certain period of time seems to me to bear no relevance. The movie says something and the script says something about development in other areas of Albuquerque, I do not believe that is grounds for saying that a statement with regard to development of an acre at Rio Rancho is authorized by the company especially in view of the contractual terms and the other disclaimers in evidence arguing against that company policy.

Seder is of a kind. Utilities at your lot within a couple of years. The contract disclaims that as a matter of company policy on its face. I believe the offering statement disclaims it as a matter of policy, as a matter of company policy. The only argument is that one or two other purchasers were told the same thing. I fail to see that that connects it or makes it a company policy to make such a declaration.

The Finnen ranchette exchange privilege, there is nothing in the record to suggest that that was an authorized declaration that, in fact, was made. The contract, of course, is completely to the contrary.

This business about luxury houses in unit 25 or unit 25 being the Scarsdale of Rio Rancho, I just don't see any evidence at all that authorized anyone to say that unit 25 was going to be for luxury houses or that it was going to be the Scarsdale of Rio Rancho.

If Len Geller thought that was the way in which he would sell unit 25, that was Len Geller --

THE COURT: He was the man in the position of the hierarchy.

MR. FLEMING: He was not in the hierarchy, he was a sales manager of ATC.

THE COURT: That's pretty high in my book. That's what this is all about and he headed it.

MR. FLEMING: I don't think he is in any different position under these cases in connection with the people on trial than with any salesman.

THE COURT: I think he is.

MR. FLEMING: I will not argue with your Honor.

Now, with regard to Bonavisa saying that the salesmen on the property told him or a salesman told him somebody could come along and lease it for a gas station because it is a corner property, apparently Ms. Hynes' position is that is not a false statement, not a ground for fraud in any event since, of course, someone could build a gas station and someone could lease it.

If that is her position, but that it was clearly authorized, that's entirely immaterial and misleading.

If she offered it for some other purpose, to create the impression that a purchaser was told any day now you will be able to lease this property for a gas station, there is no evidence in the record to support any such declaration or sales statement that it was authorized.

Fox testified that a salesman told him that he could not take a contract to a lawyer.

MS. HYNES: The manager, Mr. Fleming.

MR. FLEMING: Sorry, the manager, that he could not take his contract to a lawyer is a far cry from anticipating objections, I would like my lawyer to look at it.

To anticipate the objection, well, I want to think it over or I may not have enough money or is it a good investment or I would like to show it to my lawyer. Maybe salesmen in all walks of life anticipate ways to argue people out of that position, but it certainly doesn't authorize the statement that you can't take it to your lawyer. There is nothing in the record to support a connection as a matter of company policy with the direction that you just can't ake these contracts to your lawyer.

In fact, one of our witnesses testified -- or at least one of our witnesses testified -- that's exactly what he did do. Mr. Guerra testified that is exactly what he did do and he was called by the government.

The James declaration, the rate of Rio Rancho development Ann would get towards her area in two to five years, that was of a kind with the other.

Ms. Hynes relies upon a theory of consistency which in my submission, at least, does not connect it to the company as a matter of company policy and, in addition, the declaration itself is inconsistent with what is written company policy as expressed in the contract and in the offering statement.

The Menaul testimony, I don't recall whether Menaul testified. Do you have a record of that or whether Menaul exchanged?

Putting that aside, if your Honor please, the document that they offer simply says that there is no exchange property available at the moment except into Corrales. I think that's a far cry from authorizing a a false statement in fact that it was false, that unit 11 was filled up and, therefore, he could only go to Corrales Heights.

The Mols testimony, I am sure, was offered to establish that the salesman made a false statement in representing that unit 11 was filled up. The letter or exhibit that Ms. Hynes has offered to support the connection of that statement to these defendants doesn't have a thing to do with a false declaration that's a condition of unit 11.

Sporzynski, 25 per cent return on land per year. I have some recollection that maybe some of the materials did infer that. That was the declaration Sporzynski said was made. I am really saying if it is in the materials, I am not objecting to it at least on this basis.

Morden, any time you want to resell we are going to help you. The Miller representations during the period they were made which were limited --

THE COURT: I think that's clear, go on to the next one.

MR. FLEMING: Morden, three to four years before development would reach his lot. Again that is Ms. Hynes' consistency argument.

The argument that commercial property would be income producing.

Again, if Ms. Hynes is not offering that as a fraudulent statement, then I see no reason for its offer. I think it clearly was offered as a false statement by a salesman. If she's saying commercial property is income producing and, therefore, obviously he was authorized to say that commercial property was income producing, then it becomes totally irrelevant to the issues in this case.

Investment guarantee, no way he can lose. I thought he testified he could get his money back at any time.

THE COURT: That's what he said. The answer was: "The investment was guaranteed. There was no way I could lose and should I ever want to resell it that Rio Rancho would buy it back from me."

MR. FLEMING: I thought he said what a nice life he had. I remember that testimony very clearly.

Certainly there is nothing in this record to support that statement as a statement of company policy.

Exhibit 317, "As guaranteed and protected a program as you will ever find anywhere" certainly does not support it.

The Guerra statement again, utilities there three to five years. He said more than that. He said there was going to be a golf course, there would be a community center there in three to five years, I think next to both of his acreages in three to five years.

He, himself, admitted that it was flatly contradicted by the property statement he had read, which is certainly company policy. Remember his remark he must have had a bad lawyer.

He said the contract made it very clear that he could not depend on any period of time in which utilities would reach his property. To that degree the representation is really consistent with most of the representations which Ms. Hynes supports as a matter of company policy simply because two or three or four people testified that they were made.

I don't think that's sufficient, particularly in the face of the documentation which states quite the opposite.

THE COURT: All right, that takes care of this point.

By the way, I gathered from listening to the witnesses testify that the government sent out questionnaires to them.

Ms. Hynes, how many questionnaires were sent out by the government?

MS. HYNES: Your Honor, I don't know. There were at least -- there were two series of questionnaires and maybe three. There was one very early in the investigation. We had gotten names of people who cancelled through the Department of State. It was really on our own source of people at that time and we sent out what we referred to as a cancellation questionnaire.

We later sent out a questionnaire to people who had tried to resell their land through the Albuquerque Board of Realtors.

We sent out a questionnaire to people who bought commercial property and multi-dwelling property. What the total of the numbers are I really don't know.

THE COURT: Get them and give them to my office this afternoon.

MS. HYNES: Your Honor, I am not sure -- we didn't keep any record of the numbers that we sent out.

THE COURT: You don't know who you sent them to?

MS. HYNES: No, I know we had names from the Secretary of State's office --

THE COURT: Let's forget the Secretary of State's office. That was the early one you said. You said there were two other questionnaires, questionnaires dealing with resale and questionnaires dealing with commercial and multi-dwelling property. You must know how many you sent out.

MS. HYNES: I don't. There were questionnaires sent out to people who I believe we had named from Paul

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Heins, people who had sent in to Paul Heins and tried to list. We had Mr. Heins' records through the grand jury.

We were trying to ascertain if there were resales, if they hadn't resold through Mr. Heins, because he had no resales, we wanted to find out if there were any and we sent out those questionnaires.

Mr. Heins' own records reflect 400, so I don't know whether we had all of his 400 names or not and the result was that the people hadn't resold basically.

THE COURT: I am not interested in whether they sold or resold. I am merely asking you how many questionnaires were sent out.

MS. HYNES: I don't know, your Honor.

THE COURT: Find out.

MS. HYNES: The best thing I could do would be to estimate.

THE COURT: All right, I will take your estimate.

MR. ARKIN: Your Honor, I understand, and this is based upon having been in the case since its inception back in March of 1974, that there were at least four and maybe five different versions of the questionnaire sent out throughout the investigation over a period. They were not sent out at the same time.

THE COURT: Ms. Hynes says there were three.

MR. ARKIN: Well --

THE COURT: She says it was sent out from the Secretary of State's office, a list of people who cancelled. There were questionnaires sent out on the resale problem and there were questionnaires sent out to people who bought commercial and multi-dwelling property.

MR. ARKIN: The reason we have some knowledge of that, your Honor, is that several people who got them over the years objected because they were signed, at least until we got a court order to stop that, Patricia M. Hynes, chief of consumer fraud division.

People sent them in to the company and asked, why is the chief of the consumer products division sending out such a questionnaire? I don't know if we could put them together for your Honor, but we do know there were more than three and probably five and certainly four.

THE COURT: Ms. Hynes, get me as accurate a statement as you can and let me have it before the end of the day.

MS. CROSS: I wanted to take up a matter of five exhibits which we would like to move to strike.

The first exhibit is Exhibit 167-E which I asked the government to pull this morning which was the exhibit which Berit Hampe --

THE COURT: 167-E?

MS. CROSS: 167-E. This is the exhibit which was on L.J. Lee stationery. The allocation sheet for that night, I would hand it up to your Honor, it is entirely different from the allocation sheets that the other witnesses have introduced into evidnece.

At the time that the exhibit was introduced, which is at pages 158 and 159 of the transcript, we objected on the grounds that it was not an authorized document because it said "projected value in five years" on the far right-hand side. No other allocation sheet that was ever authorized said that.

Your Honor said at page 160 that if there was no connection and authorization, we will strike it, but there is no basis for objecting now.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, if I can see the exhibit, I can respond to it.

(Pause.)

(Continued on next page.)

MS. HYNES: Your Honor, I -- Ms. Cross, are you directing yourself to the projected evaluation?

THE COURT: That's right.

MS. HYNES: The testimony has been and the promotional material has been that you can expect a 25 per cent return per year on an investment at Rio Rancho and, indeed, in the Albuquerque area the prices on land have jumped one to 300 per cent and more per year.

Let me get the reference to that, your Honor, in "This is My Land."

Also you got in "This is My Land" on page 9 the following:

"In the past 20 years, land values in the Albuquerque area have increased at a rapid pace averaging 25 per cent appreciation per year, but in many cases as much as three to 400 per cent."

Now, the examples that are given for the kinds of percentages that you can expect on an investment in land and set out range from 300 per cent -- let me get it -- they give -- the examples in "This is My Land" give a per cent of profit and a per cent of profit per year.

The first example, Example A, the per cent of profit is 79 per cent and per year is 13 per cent.

Example B, the per cent of profit is 300 per cent and it doesn't give a time period there, your Honor.

Example C, your Honor, the per cent of profit is 1,233 per cent between 1942 to 1955, the per cent of profit per year is 89 per cent.

The example continues on, per cent of profit 5,206 per cent, per cent of profit per year 226 per cent. That is the same Example C.

Example D gives a per cent of profit of 180 per cent, per cent of profit per year 270 per cent, and that is an eight-month investment.

Example E is a one-year investment, a profit of 122 per cent.

Example F is a per cent of profit of 11,566 per cent, per cent of profit per year is 361 per cent.

Example G has -- this is the long example, your Honor, and it covers --

THE COURT: Let me see that.

Not that, I want Exhibit 167-E.

(Handing to the court.)

MS. CROSS: Your Honor, I might note the examples which Ms. Hynes was reading were the ones that Mr. Devorkin conceded the government would not prove were false.

That is a far cry from reciting historical true values of increase in the Albuquerque area and putting down on an allocation sheet projected value for Rio Rancho land within five years, and that has never been authorized.

THE COURT: What bothers me with these allocation sheets -- I haven't seen too many of them -- is that this is the only one that has this.

This is not the typical allocation sheet, which I gather was given to all the people at those thousands of dinners.

MS. CROSS: Yes. They were given out --

THE COURT: Objection sustained.

MS. CROSS: The next exhibit that we wish to strike is Exhibit 341.

We have had a discussion back and forth with the prosecution about the scripts of various movies and we agreed that a script of the movie that was shown could be admitted into evidence.

Exhibit 341 is the script of "Your Golden Future" not as it appears in evidence and it was admitted solely because of Solomon Friend's grand jury testimony, which was struck by your Honor. That being the only connection that Exhibit 341 has, Solomon Friend's grand jury testimony, the only way that that script becomes intelligible to them is through that testimony.

The striking of Solomon Friend's grand jury testimony means that that exhibit should be struck as well.

MS. HYNES: Your Honor, 341, in fact, is the script marked up by Mr. Friend.

With you there is a different reason for the script being in evidence in addition to Mr. Friend's testimony or apart from Mr. Friend's testimony.

The movie "Your Golden Future" was revised in 1972. Up until 1972, the script 341, without these revisions -- and we can substitute the script without Mr. Friend's markings on it, but the script 341 was the movie that was shown up until 1972. It is the basis for many of the quotes in the indictment and there is no dispute that that was the movie that was shown until 1972.

For that reason, the script is relevant to support the statements that appear in the indictment.

If the defendants want to substitute the script without the markings of Mr. Friend, in other words, the underlying script without Mr. Friend's markings, we have no objection to that. But that is the reason for the script.

THE COURT: Mr. Musgrove read from 341, also.

MS. CROSS: Yes. That is identical, though, of what is in the present movie.

There has been no testimony or evidence and we have not conceded that the underlying script that is 341 was actually a movie that was shown.

There has been no evidence on that.

As a matter of fact, the prosecution had witnesses testify that the film was identical throughout. When we ogt into a discussion --

THE COURT: What is the difference between 341 and the script that was put in originally?

MS. CROSS: There is a script that was later marked as a later number, I can't recall it exactly, in the 800 series, which we compared to the movie that was shown and it is identical to the movie as shown.

THE COURT: What is the difference between 341 and that?

MS. CROSS: There are numerous changes in the script, in the dialogue.

I can't outline them for your Honor.

(Continued on next page.)

THE COURT: I gather the original one was put in on the basis that it fairly represented the script and that any changes that were made were insubstantial.

Are these substantial changes or insubstantial changes?

MS. CROSS: Well, it depends on exactly how you define it, but I would say they are substantially, particularly in view of how the government has gone through in this and plucked out one isolated phrase and used that, for example, in cross examining witnesses.

There are substantial differences between the script that Ms. Hynes has and the script of the movie that is in evidence.

Now, I could get together a list, a comparison going down the pages. I don't have both scripts in front of me.

THE COURT: You say she was putting to the witness quotations from 341 that did not appear in the first script that came in?

MS. CROSS: Not with this. I would get to that with the speaker's presentations in a minute.

THE COURT: Ms. Cross, the objection is overruled.

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MS. CROSS: The next exhibit that we would like to strike is Exhibit 315, which is one of the speaker's presentations.

In that speaker's presentation, it was admitted in evidence through Mr. Madel.

Mr. Mandel, the most he could testify to was that a similar script -- he had heard a similar script used. That is at page 698 and 699.

At the top it is 699, "It is a script similar to a one I had heard used. It sounds like a script I had heard."

He couldn't tell whether it was used at Casa Bella, which is the place described in the script.

Scripts did change.

In terms of particularly connection to the individuals in this case, there are a number of scripts which the government has put into evidence. The reason how the government got them into evidence is the representation that they are basically all the same and, therefore, seeing as the scripts were basically all the same throughout the history of the company then you could infer that if you had evidence that Chester Carity worked on a script then he knew the script that was used basically throughout the history of this company.

If a defendant went to a dinner party and heard the presentation, he heard basically the same script that was used throughout.

And yet with Exhibit 315, you have quotes that are taken from 315 used with the various witnesses that appear in no other scripts.

For example, at page 6, they have asked a number of witnesses about whether or not the city planners of Albuquerque give an awful lot of attention to Rio Rancho Estates, page 14 is --

THE COURT: Where are you reading on 316 now?

MS. CROSS: I am reading at 315.

At 315, your investment as resale value.

These are quotes that they have used and try and seek to attribute to the individual defendants in this case, although there is no connection with the individuals at all with this script, because on the theory that it is the same as the other scripts, but it is not the same.

If your Honor looks at the various scripts that are in evidence, there are sizeable differences, particularly when you take --

THE COURT: I will deny your motion.

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The proof is that anything that went out in the nature of scripts or films was sent out from the home office and you had to add here to it.

They testified these were made.

MS. CROSS: Except that he is not sure that this one was used.

THE COURT: He said enough to let it in, Ms. Cross.

MS. CROSS: The next exhibit which we would like to strike are the aerials of Ranbow Lakes Estates which were admitted subject to your Honor's later ruling which your Honor later ruled.

THE COURT: Which is this?

MS. CROSS: They are 1100-A through D and 1101-A to 1101-H.

MS. HYNES: We consent to that,your Honor.

THE COURT: Granted.

MS. CROSS: And the last one is Exhibit 976, which I do not have a copy in front of me but I do have a transcript reference.

At 4636, you ruled on that.

This was a communication from Harman, O'Donnell & Henninger to Mr. Oberman, but it was sent by Mr. Katzenberg, not by the witness on the witness stand.

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Your Honor said, "I will allow it in as a communication from Harman, O'Donnell & Henninger to Mr. Oberman and that will allow it in against anybody for the time being. It may be subject to a motion to strike at a subsequent time."

We would make that motion to strike at this time.

THE COURT: The motion is denied.

MS. CROSS: We would also ask that the counts as to which no evidence was introduced, other than the twenty counts that the government introduced witnesses for, be dismissed.

THE COURT: You mean -- let us get the record on that.

Are you moving for the dismissal of the following counts --

MS. CROSS: Count 1 --

THE COURT: 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 27, 30, 31, 32, 33, 34, 37, 38, 39, 42, 43, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 62 and 63?

MS. CROSS: 65, I believe.

THE COURT: 65, 66, 69, 70?

MS. CROSS: Yes.

THE COURT: The motion is granted.

MS. HYNES: Can I just ask that be granted without prejudice if there is for any reason the necessity to retry this case, the government would have the right to choose twenty victims?

THE COURT: No.

MS. CROSS: And I believe your Honor has taken care of already Counts 74, 76, 77, 78 and 80.

THE COURT: 74, 76, 77, 78 and 80 have already been dismissed.

MS. CROSS: Yes.

We will have a short recess and then we will have motions.

MR. ARKIN: Your Honor, just one question before I ask Ms. Hynes to make calculations as to questionnaires, that it also include the FTC questionnaire.

FTC made a massive mailing of questionnaires and the government had those.

THE COURT: She can make a call and inquire as to those.

MS. HYNES: Your Honor, with respect to the questionnaires, I don't have the FTC questionnaires at all. I have no idea what the extent of it was and what the reasons were and I didn't take advantage of FTC

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questionnairs.

THE COURT: You didn't speak to anybody in the FTC or they didn't speak to you about what their investigations show?

MS. HYNES Your Honor, that is a broad question.

THE COURT: Of course it is.

And if you spoke to them, they must have given you information based on the questionnnaires.

Call and find out how many they sent out.

(Recess)

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THE COURT: Who wants to go first?

MR. FLEMING: If your Honor please, I am moving on behalf of the defendants Carity and Daniel Friedman for a judgment of acquittal at the close of our case and at the close of the case as a whole pursuant to Rule 29.

Your Honor, there were 40,000-plus homesite owners, I am sorry, 40,000-plus individuals who purchased property at Rio Rancho. While clearly you cannot judicially afford to take the time to call 40,000 customers, some analysis of those purchases it seems to me is necessary to establish, you know, what the basic class of purchasers was and whether in fact a scheme to defraud has been proved in this case or whether reasonable men could conclude that one has been proved beyond a reasonable doubt.

Exhibit 887 demonstrates that approximately 55--56 percent of the people who purchased lots purchased only one lot. We have figured out the average investment of that 55 percent and it is approximately $2600.

The same exhibit establishes that an additional 26 percent, between 26 and 27, depending upon whether it was paid in full or still outstanding, an additional 26 to 27 percent of all of the purchasers purchased no more than two lots.

You have a situation where 55 plus 27, over 80 percent, approximately 82 percent of the people who purchased Rio Rancho land purchased two lots or less and more than 55 percent purchased no more than one lot at an average cost of the investment of $2600.

We believe it creates reasonable doubt with regard to whether this was an investment fraud. We would argue that the purchasers whom we introduced on our case are far more representative of the class of purchasers than the few purchasers who were introduced on Ms. Hynes' case.

Beyond that, with regard to the representations in question, and I would deal first with the representation with regard to northwest growth.

Yquado did something in court or testified in court to something he had done outside of court, which was subject to cross examination, subject to disprove, subject to evidence that it was not correct. In other words, subject to impeachment as conclusive.

That was he actually measured with a ruler the land within the so-called 212,000 greater Albuquerque area which he, Yquado, said was not subject to development. He provided mathematical precision with regard to acreage which he, Yguado, said was not subject to development.

The prosecution's witnesses did not do that. Indeed Avellanet said he couldn't do it or basically refused to do it.

Yguado did it. The prosecution did not challenge Yguado on his measurements, that is, what the acreage actually was in fact as a matter of application of the scale by ruler.

So the only question left with regard to that acreage was whether Yguado was correct in his opinion or whether his opinion was sufficiently rational to raise a Reilly v. Pincus exception to the fraud rule.

Whether Yguado was wrong in his opinion, irrational in his opinion that the acreage which he had measured specifically and mathematically was, in fact, not subject to development. His opinion was that it was not subject to development.

The prosecution could argue that a jury question remained with regard to that issue, but if you analyze their case, and it doesn't take much analysis, in fact that argument is not available to them because Carruthers himself, their witness, while he did not take the time to measure the areas and to give precision to the acreage, did agree on cross examination almost entirely with Yguado's testimony as to the inability to develop the acreage in question.

Now, Carruthers testified that the Atrisco area had title problems.

He testified that he knew that a quiet title suit in 1976, ten years after the representations were beginning to be made, a quiet title action had just been filed.

I asked Carruthers if he wanted to bet on the outcome of that quiet title suit as a land developer and he said he would not.

That is at page 4467 and 4512.

Carruthers agreed that North Albuquerque Acres was not feasible for development and exactly the same statement is made in the x-ray prognosis report which was published in the early sixties by the City Planning Commission.

So with regard to Atrisco and with regard to North Albuquerque Acres, Carruthers agreed with Yguado in terms of development. The only thing Carruthers did not do was measure.

Carruthers agreed that the land to the south were not subject to development even today. That is at 4472 and 4513.

He agreed to the environmental line.

He agreed to the river bed. He agreed that they had to dynamite on the escarpment in order to lay foundations and, therefore, he agreed with Yguado with regard to the feasibility of development in that area.

Carruthers testified to a sewage problem at Paradise Hills which went beyond even Yguado's testimony.

Carruthers testified at 4513 there was no expectation of development even as of this date in the south valley.

Carruthers testified at 4516 that the bluff area between Rio Rancho Estates and Corrales, the town of Corrales, could not be developed.

So, in essence, Carruthers -- not in essence, with great particularity on cross examination, Carruthers agreed with Yguado that the areas which Yguado said were not subject to development in fact were not subject to development even as of this date 1976 quite without regard to 1966.

What Yguado has added to this case is precise measurement of that acreage. That was done mathematically. It was done by rule. It was subject to easy impeachment, it was not impeached and we do not believe the government challenges his mathematics.

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You take the combination of Yguado's mathematics and the agreement on Carruthers' part with Yguado's own opinion as to whether the areas he measured were in fact subject to development and you get not only -- you get far more than we need.

All we think we need to require a judgment of acquittal at this stage is a disagreement among reasonable men as to the developability of this particular acreage.

We have more than that. We have a definition by mathematical means of the acreage which cannot be developed. We have Yguado's opinion as to why that acreage cannot be developed and Carruthers testimony on cross examination both by Mr. Arkin and by myself giving exactly the same reason why in his opinion the development of that acreage was either impossible, subject to substantial restraints and with regard to Atrisco in 1976 something that even he wouldn't want to bet on at this stage.

So we believe that our proof has added to the case and looking at the case as a whole now, reasonable men could not conclude beyond a reasonable doubt that there was any falsity in the representations with regard to the growth to the northwest.

With regard to the question of good investment we think the same has happened on our case.

Carruthers and Pierce on the government's case both testified that land values had gone up in the northwest -- in that northwest segment leading towards Rio Rancho. Carruthers' testimony is that land values had gone up, all the way up to the Sandoval County line.

We have now had the testimony of purchasers and they have testified to the value of their investment, to the ability to sell, the realization of profits on the resale of homes and the construction of a new home and to their general satisfaction with Rio Rancho as an investment.

The important point or an important point in that regard, if your Honor please, is that I think it is clear from the government's own exhibit, 887 for identification, that -- I am sorry, 887 in evidence, that the men and women who testified on our case are representative of the class of purchasers of Rio Rancho property. Therefore, are representative of the people who allegedly were defrauded based on the statistics that approximately 56 percent of all purchasers bought one lot only.. An additional 27 percent bought two lots only. Therefore, 82 percent of the purchasers purchased no more than two lots. Not an investment scheme at all but essentially a relocation plan.

We think our people who testified on our case are representative of the class and that the class represented by the witnesses who Ms. Hynes called represent such a minute portion of Rio Rancho purchasers that they cannot form the basis of a criminal scheme to defraud in violation of the mail fraud laws supposedly stretching over fifteen years.

In addition, we think that whatever questions there may have been on purchase of Rio Rancho land as a good investment, are overcome for reasonable men by the testimony of the homesite owners who testified on our case and I might add by the testimony of Mr. Graham who testified that Dale Bellamah, whom Carruthers and everyone in this case has said has the best eye for value in New Mexico, the most successful builder and developer in New Mexico, that Dale Bellamah in joint venture with Mr. Graham's bank has gone to the west side to Taylor Ranch now as the only feasible area of development in the Albuquerque area and has embarked upon a construction program which is presently, having started just a year ago, one and one half years ahead of schedule.

B ased upon the additional evidence which has been introduced on our case, we submit most respectfully, if your Honor please, that reasonable men could not beyond a reasonable doubt find fraud in this case as alleged in this indictment.

On the issue of growth to the northwest, on the issue of Rio Rancho and the good investment, on any issue which remains in this case.

We say, secondly, as I said before, that our argument is buttressed, we believe and we believe becomes dispositive when it is recognized that the men and women who came from Rio Rancho and testified to how they felt about Rio Rancho as an investment, to what they had realized on Rio Rancho as an investment, not only in money, but in terms of quality of life, that those men and women based upon the government's own statistics represent the class of purchasers of Rio Rancho property, probably 82 percent of which purchased no more than two lots, and that a mail fraud indictment which charges criminal fraud over a period of over fifteen years cannot be based upon the testimony of purchasers who represent a percentage which could not even be figured.

For example, the last percentage figure that appears on this, ten people bought fourteen lots or less, that is .23 percent of the purchasers.

Eight people bought thirteen lots, no more than thirteen lots. That is two percent.

The numbers are just infinitesimal. You don't have an investment scheme here. You don't have -- the government's witnesses do not represent the class of Rio Rancho investors based upon the government's own evidence. Our witnesses do and our witnesses testified to real and substantial value that you can almost feel. Not only in terms of money and resalability, but in terms of what they got for their money.

Putting all those things together, if your Honor please, we think that our case has created or has filled whatever gaps may have existed at the close of the government's case in terms of application of this standard.

We believe looking at our case as a whole reasonable men could not conclude beyond a reasonable doubt that the government here has proved the scheme to defraud which they have alleged in the sale of this land at Rio Rancho.

Now, I would like to take just a very short moment on Daniel Friedman. Daniel Friedman became vice-president of sales in 1971. A review of Mandel's testimony and Zaknich's testimony and Lederman's testimony demonstrates, we believe that Daniel Friedman had nothing to do with sales other than opening offices and providing for the financing and the rest of it until he became vice-president of sales in 1971.

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He was treasurer prior to that time. He therefore was not in a position to be bound, in fact to be bound at all, by representations with regard to resale or other representations.

Now, his responsibility as vice president of sales began in late 1971. We believe there is no evidence in this case to support a scheme to defraud with regard to sales after he became vice president in charge of sales in late 1971.

During that entire period of time, late 1971 until the filing of the indictment, the resale disclaimer, that is, don't expect to resell, was in the property statement at all times.

To my recollection there was no testimony of even a salesman making a statement contrary to that disclaimer in the property statement, making a contrary statement orally to a customer after 1971.

Finally with regard to the northwest representation, I think I can say two things. As I have said before, we believe that our case takes -- that the evidence that we have produced, Yguado's evidence, Graham's evidence, the government's inability to challenge Yguado's mathematics and the essential agreement between Yguado and Carruthers on the feasibility of development in the areas excluded by Yguado plus Graham's own testimony to that effect and Graham's testimony that the men with the money are now in the northwest, we think that eliminates the northwest issue overall for the case as a whole.

Putting that aside, if your Honor please, from 1971 to 1975, the representations with regard to the northwest were much diluted in any event. Now is the period of time during which Daniel Friedman was the vice president in charge of sales.

Finally with regard to Daniel Friedman, there is no evidence connecting Daniel Friedman with what the government has offered as evidence of the falsity of the declaration or opinion that Albuquerque would grow towards the northwest. The Avellanet report, which is evidence upon which the government relies, has not been connected to Daniel Friedman. Therefore, we say the case as a whole must go, I say the case as a whole must go, with regard certainly to the individual and we believe with regard to the corporation and within that Daniel Friedman did not become vice president in charge of sales until 1971 should be dismissed since there has been no evidence of fraud since 1971, since the resale disclaimer appeared at all times while he was in that position.

Since I know of no evidence that resale was represented at any time after he took that position, since he was not connected with any evidence of falsity with regard to the northwest projections at any time and since we believe the northwest projections were diluted in effect, as your Honor I think has found previously after he became vice president of sales.

I should add with regard to Yguado's testimony on development, the testimony of Mr. Graham as to just what was left in the northeast and his own views as to what was subject to feasible economic development in this case.

How many angels can dance on the head of a pin, if your Honor please. That's what this has come down to. The question in this case is whether it was rational and honest to say that Albuquerque was going to grow to the northwest. There is no question Albuquerque was going to grow to the northwest if it grows at all and this idea that maybe the state could sell the land or maybe the Atrisco could be developed or maybe something could happen here is just not the basis for a criminal case and we think we have filled in whatever gaps may have existed at the end of the prosecution's case.

I point out again, I think that becomes particularly true when we realize an analysis of the government's own document that the purchasers of Rio Rancho land were represented as a class by our witnesses and not by their witnesses; that their witnesses, if anything, not generated by government questionnaires, constituted what the Court of Appeals referred to as a few disgruntled purchasers. They do not represent the class. The class is represented by those people who got on this stand and were not challenged. In fact, their testimony is accepted essentially, who bought and moved to Rio Rancho. They testified to their version and there may be a question of credibility, but who truly represent the class as proven by the government's own document 887. That's the class of purchasers and those people said they weren't cheated, they got more, Mrs. Davis said, I think, said all I did was gain.

We do respectfully, your Honor, ask that this case be dismissed at this time.

I have one other point I would like to raise. Your Honor has talked about the scripts coming out of the home office. Assuming the scripts are admissible against the corporation, we do not believe they are against any individual defendant on trial unless they are connected and we do not believe they have been connected in substantial part certainly with regard to all of the defendants and we think really with regard -- I think they really haven't been connected with any defendants, they may have been connected with one or two, but I think that's the determination that must be made.

I think this is an unusual case where, given the government's evidence, we have now arrived at the position, given our evidence, where a balance has been reached on matters of opinion where we think beyond that with Yguado's unchallenged mathematical computation, with Carruthers' agreement, with Yguado's testimony as to development, with Graham's testimony as to where the money is going in Albuquerque, the smart construction money, it is his own view that they can't do any more in the northeast, his own view that the representations that Rio Rancho made were correct representations when made and the simple single overriding fact that clearly our home site owners, our witnesses, our purchasers truly represent the class based upon the government's own exhibits warrants a judgment of acquittal at this time at the close of all the evidence.

THE COURT: Mr. Arkin.

MR. ARKIN: Thank you, your Honor.

On behalf of Howard Friedman and Henry Hoffman, I also make a Rule 29 motion and I join in Mr. Fleming's comments. I think he said it very well. I am not going to tread upon what he has said so well.

I believe, your Honor, that the focus on this motion has to be what the government has adduced to show knowledge of falsity on the part of either of my clients or for that matter anybody in the case.

What has appeared to emerge from this case are two issues essentially, two questions. I will say I join with Peter Fleming in saying I don't think they are much of any issues, but the issues appear to be growth to the northwest as a representation in one form or another and it was made, I might point out to your Honor, in many forms, but essentially if you look at the overall, you have a little snippet here and a half a line there that Albuquerque was going to grow to the northwest because it was a rapidly growing city and because there were constraints in other directions about the city which we think we have proven. We think we have proven that representation to be true not merely subject to question, but to be true.

If you look at the evidence on that particular issue, I don't dwell on it very long, the only evidence which the government has adduced either upon the issue of falsity, if you will, or upon the issue of knowledge of my clients is a report, the famous Avellanet report, the Harman, O'Donnell report, which apparently was sent to the company and there is a memorandum that one of the individual defendants read or at least parts of it and that he sent a memorandum, this memorandum to others of the defendants particularly by two clients in which he said I challenge the report in terms of its master planning concept. I don't think Mr. Avellanet is correct in this or that. Maybe you ought to read the report.

No direct evidence that -- no direct evidence, in fact, if anything, a very, very attenuated and I think indefensible inference that either Henry Hoffman or Howard Friedman ever read the record and I would say no inference that they read that line or paragraph which Mr. Avellanet wrote which he described on the stand as a rough cut analysis and which we have shown to be absolutely and completely erroneous, not only in its predicate because of the population density predicate, but also because of the amount of miles which he measured it was shown mathematically just not to exist.

That report does not bring home to my clients knowledge of any falsity, particularly when falsity hasn't been proven. I won't dwell upon that again as I said.

The memorandum which Ms. Hynes relies upon would indicate that the defendants did not accept that report or agree with it or that it was worthy of being relied upon.

Again, on our case, which makes I think a substantial and dramatic difference between the situation that existed at the end of the government's case and our case, we have shown that what was brought home to the defendants was Yguado's report. Yguado had statements in his development study which he made prior to any relationship to Rio Rancho or these people in which that very representation which later and throughout in one form or another in the company's literature was the same, that is to say, he said the same thing.

He later gave his permission to excerpt, digest it or publish a condensed version of it and it was published and we introduced the two exhibits showing it was published and used by the company.

That was in their files. We showed that.

That to me, if your Honor please, would be a substantial good faith basis for a company and these people to believe the representations were true. It certainly would raise, if there is anything to be said for the Avellanet report on the issue of knowledge and what was in my client's brains, certainly in this kind of a situation, which is essentially the Reilly,Pincus or MacNulty type of situation completely countervail whatever you might get out of Avellanet.

To put it another way, these people have been shown to have two opinions in their files. One Mr. Avellanet's rough cut and so forth, which may not have been brought home to my clients, and the Yguado report which most certainly was because that was one the company asked permission to publish and was one which they had initiated when they got into the business of selling land about the area of Albuquerque.

I just don't see how knowledge has been brought home. The government seems to suggest at previous times that they only looked, had they stepped outside their corporate offices, Howard Friedman as president or Henry Hoffman as a consultant and one time director, had they stepped out of their office they would have found the great truth.

Well, there is no truth to find. You walk yourself around the map or the mosaic and what you have got to come up with is the same opinion which would sustain the representations they made about growth to the northwest.

We had Jack Brown, who was the president or is the president of Albuquerque Federal, who says the same thing. These people are businessmen and not topographers and not people who pace off isolated acres in other parts of Albuquerque, certainly can be held to no higher standard than a man who makes it his business to know what kinds of lands there are available in Albuquerque and puts his money where his mouth is.

I say there is no evidence at all to link up knowledge of falsity of that statement of growth to the northwest if there be any falsity and there is not.

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I should suggest to your Honor that the only way in which the government seems to be left with to prove their plain falsity is, well, they shifted, it seems, to the northeast to the far west to the Rio Puerco Canyon and they seem to be attempting to change the historical density of Albuquerque, that is to say, that the government would have us convict people, send them to jail, based upon a possible change in historical density of Albuquerque of perhaps triple or two and a half times what it has been.

I would say not only has that not happened, but perhaps if the government waited 25 or 30 years to see if it did happen, maybe then they could have some kind of quarrel with a good faith prediction made today and 10 years ago and 15 years ago.

Any item or allegation or claim of ultimate falsity, even in distinction or contrast to what was in my clients' minds right now, are premature at the very least.

Insofar as the good investment representation and how that is couched, I was not here when Ms. Hynes sought to rebut the arguments made by Mr. Fleming and I on the previous Rule 29 motion, we were in Albuquerque at that time, I read them subsequently, and Ms. Hynes, by a very vigorous canvassing of the many thousands of pages of documents pulled out a little piece here and there that this is what good investment meant.

Your Honor, when you think of the concept of a claimed mail fraud scheme, I suggest that you have got to look at the burden of evidence.

You know, sure, and we have asked that it be stricken, we might have had an occasional aberrant salesman off on a frolick who says something which was his own kind of puffery.

But essentially here when you look at what took place, there is nothing overall which has been proven false in terms of good investment. Quite the contrary, I think the evidence on the government's case percentagewise, on our case, is that you could, in good conscience, say it was a good investment, a sound investment, so forth.

Again, I will not dwell on falsity. Let's dwell on what was in these peoples' minds. And I say there is no evidence at all from which anybody can draw any inference at all that they did not believe it was a good investment, that they countenanced any false representations in that regard.

There is no evidence that it was ever brought home to them that somehow buying this land in small parcels of a half acre or an acre is something which was a bad investment or worthless or valueless. Quite the contrary, if anything, the tenor of the testimony is buying land is a good thing.

The very examples relied upon by the government in, you know, 23 or 29 or 31 of their various examinations of pages 8 and 9, they had to concede the various land values set forth or land transactions set forth in that document "This is My Land" on pages 8 and 9 were true and those did show rapid increase in land values about Albuquerque.

If that was what was in these peoples' minds, it is fair, I think, to infer that they believed in what they were selling.

The fact that they put the money in year after year and built this development, it is fair to infer they believed in what they were doing.

We have established this was not merely a show case. The aggressive, affirmative, concrete substantial steps these people have taken shows their intention as to whether this is a good investment or not.

The literature which was authorized from 1969 on had within it the caveat which I suppose any wise man would give to his son about to embark on any investment, "This may be speculative. There may be no resale market for a while while the company is competing with you," something which was obvious in there.

What was in these peoples' minds, it seems to me, is borne out to some extent by the very literature relied on by the government. The examples which they gave to the purchasers were true. The caveats they gave showed how cautious they were.

Insofar as the very, to my mind, very narrow, very strained, contorted evidence adduced by the government on this resale issue, this Multi Listing Service which was testified to I guess by Ron Williams, a witness, there you don't have any evidence there was no resale market and you have no evidence beyond that that it was brought home to these people.

My client, Mr. Friedman, was president of a large corporation; Henry Hoffman, a consultant, director, here in New York.

While they may have nominally had indirectly or vicariously or even in some sterile formal sense a realtionship with Double R Realty which was on the Multi Listing mailing list, that doesn't show, as your Honor very cogently remarked, that they knew what Multi Listing knew or what anybody at Multi Listing knew.

Just as the president of BBD&O, these people do not read, do not know and do not have contact with every piece of paper that floats across the desk of one out of multi thousand employees.

A multi listing itself would not have shown falsity or misrepresentation of bad investment. Even on the government's case, 29 people sold their multi listing without any efforts to sell.

Most of the multi listings were with Heins, which I think we can eliminate fairly. There is no showing selling 20 out of the remaining 290 or even the entire 600 plus was not consistent with ordinary sale experience within the Albuquerque area, that it was low. These people did sell.

We showed existence, I might say, of another resale market, the national one.

But, again, no knowledge on these peoples' parts of what was going on in Multi Listing.

The same thing with the auction, this distress situation. Nothing, again, there that this evidenced a lack of resale market. If anything, land was sold at the auction and the land which was not sold, the land not sold -- well, there were knock-down prices, like at any auction.

You can take a Chippendale, take it up to the

Park-Burnett Gallery, you ask too much, like Mrs. Switt did, three times what you paid for the property, you might not sell it right away.

As your Honor remarked before, liquidity. Nobody has a right to believe that a piece of property you buy, whether it be in Westchester County, in Sutton Place or anywhere in Manhattan, in Los Angeles, is going to be saleable within 24 hours or 48 hours. Land is just simply not that kind of thing, and nobody represented to the contrary and certainly nobody authorized any representations to the contrary.

Certainly these people, again, on the knowledge of good investment, that can't be brought home to them, that it was a bad investment.

By the way, the government has not proven fraud in the future. They have not proven it is a bad investment.

To the contrary, your Honor, I can't represent I am taking my fee in Rio Rancho land, but I can say that we have shown time and time again throughout this trial on their case and in our case that land values have gone up consistently in the Albuquerque area. It is an area where population is expanding. It is a growing area.

It is not too much to infer from that -- and I say infer in a very monolithic down the line way -- that that is what the fact is, that land all over is going to go up in value.

If you look at that map, the piece of land which remains to be developed, the largest piece of land, is right there where Rio Rancho is and, your Honor, they are developing it.

Again, it is not unreasonable to assume, in fact, I say it has to be assumed, it has to be inferred that they had a right to believe it was a good investment, particularly as they were developing it.

We have had several witnesses on the stand here on our case who have purchased land over the years, who have been to dinner parties, who have been to Rio Rancho, lived at Rio Rancho and they saw nothing misrepresentative in what they were told and the pictures or the presentations.

I mean, sure, if you want to find, again, an isolated salesman who said something, you know, under the table or under the napkin or something, that wasn't what the company was about, and the testimony is here unequivocal they were trying to prevent anybody from doing anything which was wrong.

But these people, at most, had the similar

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experience in terms of what was said and done about Rio Rancho as the witnesses here. By that I mean this, that Howard Friedman went to a dinner party, he went to a dinner party to commemorate something, the Ampex building. You had him at a few parties.

You had Henry Hoffman at a dinner party or two. You had them doing things which at least with Howard Friedman in the financial end of the company, no relationship to sales, and then years and years ago, yes, you had Henry Hoffman who had certain duties, but you didn't hear very much about Henry Hoffman aside from his formal positions as director and then consultant the last five or ten years.

These people were not in the field holding salesmen's hands. They laid down rules. Those rules, as we have heard, have been not to tell an untruth.

I don't see how any kind of knowledge of falsity or misrepresentation is brought home in any way to either of these two people. For that matter, anybody in the case.

I don't think that discussing with your Honor the Reilly andthe other cases any more than we have is going to be fruitful in terms of time.

Let me just end by saying I don't think the government, aside from not proving falsity, particularly in the context of a criminal case, has brought home to my clients any kind of proof, proof of any kind of intention to foist a misrepresentation on the public or any one individual.

I say the proof is overwhelming to the contrary.

I am trying to couch my words in such a way that it does not sound like a jury argument. I don't want it to be.

As a matter of law, there is nothing in this case which can be brought home to people who sit in a corporate finance office or somebody who is a director that anything the company in any of its literature said was wrong, and I am going to end by saying that throughout -- not throughout.

In the last argument, what Ms. Hynes seemed to dwell on -- and I don't know how it affects the disposition -- is a line here and a line there in certain scripts which are in evidence.

This business has been going on for 15 years, there have been tens of thousands of dinner parties, there have been 44,000 or 45,000 sales. How can you, by taking an isolated line out of one script which I think it is fair to infer there were many, many versions, all of them were different on one line or another, depending on the salesman, depending on the dinner, how is it fair to infer particular knowledge of a particular statement in a script, for example, which was not used universally and then from there to infer if there is any quarrel or quibble with that particular statement knowledge of falsity on my client's part.

I say it cannot be done. That is the basic trouble I have with this case, there is nothing bringing anything home to them, other than the fact that they created a community in Rio Rancho with 7,000 people and are continuing to do that ever day from now on.

THE COURT: Mr. Lavinsky.

MR. LAVINSKY: Your Honor, for the reasons stated by Messrs. Fleming and Arkin, I move on behalf of the corporate defendants AMREP and ATC for judgment of acquittal pursuant to Rule 29.

I will also move on behalf of Rio Rancho Estates.

MR. ARKIN: I am sorry, your Honor, not that I forgot it, I just didn't mention it.

THE COURT: All right, Ms. Hynes.

MS. HYNES: Your Honor, I believe we are basically in the same position that we were at the end of the government's case, with the exception of the testimony of, obviously, some of the defendant witnesses which were purchsers who lived there, who bought to relocate and who are within the 5 per cent who the defendants expected to move there.

We also have the testimony of Mr. Yguado.

Mr. Fleming says that the testimony of Mr. Yguado has not been impeached.

I disagree.

Mr. Fleming mentioned Mr. Carruthers' testimony. Mr. Carruthers testified that out of the study area that had 212,000 acres, it was his estimate that approximately 20 per cent was outlined in the blue area which had problems with respect to development, but even with respect to that he didn't agree that all of it was not capable of development.

Mr. Pierce, who Mr. Fleming has not mentioned, totally disagrees with Mr. Yguado's testimony.

Mr. Yguado testified that in the northeast section of Albuquerque there was I think six to eight miles, maybe on cross he got it up to twelve miles, of land that was capable of development in the northwest section of Albuquerque.

Mr. Pierce said that there was 30 to 35 miles of land that was available in the northwest quadrant for development and he was excluding the land on the escarpment.

Also with respect to the Atrisco grant, Mr. Pierce stated that beginning in 1967 and 1968 there were efforts to settle the title disputes.

Indeed, it is interesting to note in 1968 he also testified that I-40 was completed, and I-40 is the interstate that goes through the Atrisco property. That was completed in 1968, by the end of 1967, the beginning of 1968. He said it was completed in 1972, and the title problems were resolved in the Atrisco grant and it went to the Westland Corporation and they resolved the title problems.

THE COURT: He didn't go that far.

MS. HYNES: Yes, he did, your Honor.

THE COURT: I am sorry, he did not. But go ahead.

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MS. HYNES: He also said there was litigation with respect to title problems on the periphery of the Atrisco Grant, the periphery being out here (indicating) and it was outside of the study area.

The testimony was in the study area, there was only I think 10 to 20 percent of the Atrisco Grant which was in the study area.

Mr. Pierce's testimony is that the litigation on the title problems was on the outside periphery with respect to the Atrisco Grant.

Both Mr. Pierce and Mr. Carruthers testified that, in their opinion, the Atrisco Grant was capable of development, and, indeed, both of them testified that today the city is extending water lines into the Atrisco Grant property.

There has been testimony that there has been development on the Atrisco Grant property and that the city has been advised by the title companies that if the city advises where they will extend the water lines, where the utility lines will go, that those title problems can be resolved and there is not an impediment to development in the Atrisco property.

That is testified to by both Mr. Pierce and Mr. Carruthers.

With respect to North Albuquerque Acres, the testimony of both Mr. Pierce and Mr. Carruthers has been consistent that there is a difficulty in reassembling this property, but, indeed, there has been development on North Albuquerque Acres.

Basically, we have to remember that Mr. Yguado's testimony today about his opinion as to what land in that area is not capable of development, particularly, let's take the area in the north mesa, the northwest portion and the southwest portion, is entirely inconsistent with what he said in his report in 1963.

There is no evidence in this record that the land that Mr. Yguado is excluding now is capable of development was ever brought home to the defendants, that he ever had a conversation with any of the defendants, that he ever notified AMREP Corporation or Rio Rancho Estates or ATC Realty that in his opinion there were significant portions of this study area that were not capable of development.

The sequence and the chronology here is that in 1963 Mr. Yguado does this report for the West Side Association. The report is really a report to be given to the city to try to get bridges over to the west side, and Mr. Yguado, in arguing his client's position on why bridges should be brought into the west side, tells about the amount of land that is available on the west side.

He includes the Atrisco Grant, he included Paradise Hills, which he is now excluding in 1977. But in 1963 the report that Rio Rancho bought was a report that had these areas delineated as capable of development on the west side.

Now, I just want to highlight one thing, your Honor:

The presentation that was made to customers had a theme to it. The theme was Albuquerque is bursting at the seams.

Now, even Mr. Yguado couldn't give a straight answer on that one. Albuquerque -- the theme of the sales dinners was Albuquerque was bursting at the seams and could only grow to the northwest where Rio Rancho Estates was located.

Mr. Graham couldn't testify that the only direction that Albuquerque could grow was to the northwest.

And I might mention that Mr. Graham, whom Mr. Fleming characterizes as the smart money, his smart money and his bank's smart money is in the College Heights area.

Now, interestingly enough, the College Heights area is mentioned in the original version of the West Side Story which was edited out of the version of the West Side Story shown to customers.

What I am getting at, your Honor, is that the whole thrust of the sales theme here was, one, the only direction to the northwest; two, that the scripts were saying that it had to be through Rio Rancho Estates, and the whole representation that was made was this was the only direction and the only place where it could go, Rio Rancho Estates.

What they did was picked out Paradise Hills, they left that in the West Side Story, they edited Volcano Cliffs, they edited out College Heights, they edited out the other subdivisions that were talked about in the West Side Story, and that's what that commissioner was talking about when he was talking about master plans for the area, because the city has master plans for this area to bring utilities in. That's true.

But once you got that statement edited out and those subdivisions -- I mean the subdivisions edited out that he was referring to, they left in Paradise Hills.

Why?

The scripts tell you why. Because they used Paradise Hills and said that the development of the city --

let me quote from 315, and this is in 1965:

"The city has pushed out as far as Paradise Hills. You saw it in both films." The film being West Side Story.

So they are telling purchasers sitting in New York the city has pushed out to here and the next place is Rio Rancho, and they edited out this (indicating) and which is, and Mr. Avellanet told them in their report, not only is there land over here to take care of the population pressures, but there is sufficient land closer to the city of Albuquerque to satisfy those needs (indicating).

The government agrees, there is land here to satisfy the needs.

Mr. Graham does have the smart money in College Heights. That may be developed. That is in and closer to the city. It is ten miles away from Rio Rancho and it may be developed.

But that's not what these defendants talked to customers about. They edited out College Heights. College Heights was also the subdivision that Mr. Yguado made the money on, but that was not shown to customers in New York.

Customers were told in New York the city has reached as far as Paradise Hills and then gave the examples of five years ago in Paradise Hills you could buy at $600, today it is $12,000 or ten years ago you could buy it for this and today it is so much more.

The whole thrust of that was Rio Rancho is next, it is the only place it can grow.

Now they are trying to say, well, when we meant the northwest, we meant all of the northwest.

Well, they didn't mean all of the northwest and they didn't say all of the northwest. There was nothing in their promotional material and in the scripts and in the film that they edited out from the West Side Story about Volcano Cliffs, about any of the other subdivisions on the west side of Albuquerque; they are there, and they are the areas where if the development goes to the west side, the development is going to go there first.

And Mr. Graham with his smart money knows it. And Mr. Graham with his smart money has not taken the bank's money and invested in Rio Rancho, he has invested in College Heights,ten miles away on the west side.

Mr. Fleming would also argue if you bought one half acre you didn't buy for investment.

I don't know in this record where he gets that from, because there has been no contradiction of Mr. Avellanet's testimony that he attended a meeting with Mr. Oberman, with Mr. Sommerholder and Mr. Walsh and a statement was made to him by Mr. Oberman, twenty-five percent think they are going to move, five percent move.

That five percent figure was in the Harman, O'Donnell final report. There is nothing in this record contradicting that. They didn't put Mr. Sommerholder on the stand and say Mr. Avellanet was a liar, they didn't put Mr. Walsh on the stand and say Mr. Avellanet was a liar. There is no memo from Chester Carity saying, "We don't believe it is five percent."

There is in this record evidence that these defendants set aside only a certain amount of this land and that they developed a community.

The government does not contend and never contended that these defendants didn't expect to have a community at Rio Rancho; they did. And they knew the size of that community.. They knew that there was no local market.

As recently as 1973 the memo from Mr.Colegrove talking about, "How can we get part of the local market?"

What does Mr.Colegrove talk about? People in the northeast and the southeast living close to the employment centers.

This company know that they were not drawing on a local market and that they were only drawing on a national market, and there is no contradiction in this record that the five percent figure that Mr. Oberman talked about is, indeed, the five percent figure.

Indeed, the facts support that and the actions of the defendants support it, because they only set aside a certain amount of land. If the situation in North Albuquerque Acres pertains to North Albuquerque Acres with respect to the difficulty of reassembling, it applies to Rio Rancho as well, because in North Albuquerque Acres utilities are in North Albuquerque Acres to a certain point. The difficulty there is to get a hold of the individual owners and reassemble that land.

In Rio Rancho Estates, the difficult would be exactly the same. Not because of drainage problems. That's not the problem.

The difficulty in North Albuquerque Acres is if you can reassemble the owners you could solve the problems. The difficulty is reassembling the owners.

In Rio Rancho, the difficulty would be the same, reassembling the owners, so you could coherently put utilities into that area.

The fact is they sold off the land outside those building areas in the same way that North Albuquerque Acres did to people all over the country and the difficulty of reassembling that land is going to be precisely the same as North Albuquerque Acres.

Basically, your Honor, we have gone through on the motions after the government's case the evidence against the individual defendants.

The evidence against the individual defendants remain. There isn't anyone who took the stand on the defendants case that contradicted that evidence and we stand on the arguments that we made after that.

If your Honor has any questions, I will be happy to answer them.

THE COURT: Motion of judgment of acquittal are denied.

We will reassemble at 3:00 o'clock Friday afternoon, at which time I will rule on the requests to charge, which I hope I will have from everybody by noon tomorrow, not later, so I can look at them. I will rule on Mr. Fleming's motion to strike designated portions of the testimony which was argued at the beginning of the morning session.

The Court is adjourned.

MS. HYNES: Your Honor, can I just correct for the record that I said that I thought Mr. Mols moved to Rio Rancho, tried to exchange in 1971.

We have checked the transcript and it is June of 1972.

(Adjournment taken to January 14, 1976, at 3:00 o'clock p.m.)

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 14, 1977
3:00 P.M.

Trial Resumed

(In open court - jury not present)

THE COURT: As I came into the robing room to come on to the bench, both counsel, that is, counsel for the government and the defense, had served upon me additional requests to charge.

I have not read them and they won't be ruled upon until Monday morning.

I think the first order of business is the disposition of Mr. Fleming's motion to strike certain statements of the witnesses.

I reviewed the requests by Mr. Fleming to strike certain portions of the statements and the arguments of counsel on that motion appearing in the transcript at pages 7181, line 25 to page 7221, line 14.

Some of the requests fall into a group which call for a clear denial. They are, and I will now list them:

November 8, 1976 Hampe, page 200, lines 6 to 12.

November 9, 1976, Henry, page 460, line 19 to 24.

November 9, 1976, Henry, page 493, lines 11 to 17.

November 24, 1976, Bonavisa, page 263, lines 17 to 22.

November 24, 1976, Bonavisa, page 2617, line 11 to page 2618, line 9.

November 24, 1976, Fox, page 2665, lines 17 to 23.

December 20, 1976, Bushansky, page 5407, lines 19 to 25.

December 22, 1976, Reyes-Guerra, page 5722, lines 14 to 23.

Other requests belong to a group that should clearly be granted. They are:

November 8, 1976, Henry, page 297, lines 17 to 20.

November 16, 1976, Finnen, page 1482, lines 14 to 17.

I may say here that Finnen is the only one who so testified as he did, and he admitted on cross examination that his contract specifically negated an exchange right.

December 3, 1976, Mols, page 3721, line 18, to page 3724, line 21. As to this witness, his is the only testimony regarding Unit 11 being filled up.

Exhibit 893-A speaks as of October 1971, while Mols was testifying as to June of 1972.

December 21, 1976, Morden, page 5510, lines 17 to 18.

December 22, 1976, Gray, page 5645, lines 4 to 7.

I might say here that the word "investment" as used by Gray refers to a claimed representation that Rio Rancho Estates would buy back his property if he wanted to resell it.

The third group of requests present problems as to whether they should be stricken. They are the following:

November 8, 1976, Henry, page 268, line 22 to page 269, line 20.

I insert an aside here.

The reason I am going through all this, there is no record of your motion, as I gather. T his is the only way we can make a record.

Isn't that correct?

My copy is marked up, I can't give it to you.

Ms. Hynes has a copy which I gather is marked up, and Mr. Arkin told me two days ago he didn't have a copy.

MR. ARKIN: I don't have a copy in court and I will bring a clean copy --

THE COURT: No, I don't care for it.

My aside is to tell you the reason I am going through it this way is now you have a record as to what you moved for and what the rulings were.

MR. ARKIN: We appreciate that, your Honor.

THE COURT: November 16, 1976, Sader, page 1399, lines 4 to 7.

November 16, 1976, Sader, page 1429, lines 18 to 22.

November 17, 1976, Greenberg, page 1589, lines 21 to page 1590, line 2.

November 17, 1976, Greenberg, page 1590, lines 17 to 21.

November 17, 1976, Greenberg, page 1591, lines 15 to 22.

November 19, 1976, DeWitt, page 2099,

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line 17, to page 2100, line 8.

November 23, 1976, Davis, page 2402, lines 9 to 13.

November 23, 1976, Davis, page 2425, line 18, to page 2426, line 4.

December 2, 1976, James, page 3567, lines 7 to 14.

December 21, 1976, Morden, page 5515, lines 19 to 23.

December 21, 1976, Morden, page 5516, lines 10 to 18.

December 21, 1976, Morden, page 5524, line 17 to page 5525, line 3.

December 22, 1976, Reyes-Guerra, page 5720, lines 22, to page 5721, line 4.

end t

(Pause)

Within the guidelines set forth by Prichard v. The United States, 386 Fed. 2d 760, at pages 766 and 767, it was an Eighth Circuit case decided in 1967, I find there is no sufficient evidence in the record from which an inference can be drawn that these defendants either authorized or ratified the representations contained in this third group.

The government claims that over 40,000 persons purchased this property. While there is nothing in the record to substantiate Mr. Arkin's claim that there were 850 salesmen, I recall a statement made to me in pretrial there were over 500 salesmen.

Some 7,000 questionnaires were sent out to purchasers and 2500 completed questionnaires were returned.

The government witnesses have testified to the strict control exercised by the corporate management of the sales representations.

With this background the depth of the government investigation, both in time and activity, I find that the small number of witnesses in this third class who have testified to specific isolated statements made over a period of years by different salesmen is insufficient upon which to raise any inference against the defendants.

Furthermore, there is a large amount of evidence in this 7500 page record on which a jury may find the defendants guilty.

There is the presentations at the dinners, which consisted of the scripts used by the managers, the films, the brochures and the practice regarding the distribution of property reports, offering statements and general presentation.

There were also the procedures that were followed on the tours. There was the mailings of promotional material, resale letters, lulling letters and price increase letters. All of this presents a huge amount of evidence upon which a jury may be entitled to find the defendants guilty of the crimes as charged.

I will now rule on the requests to charge.

On the government's requests to charge:

Request No. 1 is denied except as charged.

MR. FLEMING: Your Honor --

THE COURT: Yes.

MR. FLEMING: May we make specific objection to the bottom line at page 4 of Request No. 1.

"Nor can the fact that a grand jury has returned this indictment can detract"et cetera.

There is no need to mention the grand jury in connection with the presumption of innocence or the return of the indictment.

THE COURT: Objection overruled.

I gather the use of the figure 26, Ms. Hynes, is incorrect, it should be 25?

MS. HYNES: Yes, your Honor.

THE COURT: On page 5.

Request No. 2 is denied except as charged.

Request No. 3 is denied except as charged.

MR. FLEMING: Your Honor, I am sorry. With regard to the Request No. 2, which your Honor has denied except as charged, on page 3 of that request, we would specifically object to inclusion in the instruction which your Honor does give of the language:

"Few men, however guilty they might be, would be convicted. It is practically impossible for a person to be absolutely and completely convinced" --

THE COURT: I don't give that, as you know, from my charge in Rapaport.

MR. FLEMING: I am sorry.

THE COURT: And the Fulsom reference in my charge in Medlinger. I don't give that.

When I say "denied except as charged," I generally give what is requested in the three pages, but you have my Rapaport charge, you tried it before me twice and you heard it twice. That sentence is not in it.

MR. FLEMING: I was thinking of other things, your Honor, I am sorry.

THE COURT: Request No. 3.

Now, as far as the indictment and the statutes are concerned, I neither read the statutes to the jury nor do I read the indictment. I summarize what the law requires and I summarize what the indictment charges the defendants with having done.

MR. ARKIN: Do you permit the indictment to go into the jury room?

THE COURT: Only if they ask for it and I don't like that either.

MR. ARKIN: I don't either.

THE COURT: If a specific request is made for it, I will do it. I do not tell the jury they can have the indictment. I tell the jury they can have the exhibits. I tell the jury they can have any portions of the grand jury testimony read to them, but I do not send an indictment into the jury and I don't give them an opportunity to ask for it by suggesting they may ask for it.

MR. ARKIN: May I, if your Honor please, read from a portion of the indictment in my summation?

THE COURT: If you wish to. I can't prevent you from doing that.

MR. ARKIN: I just wanted to make that clear, your Honor.

THE COURT: Of course there will be a redaction in that indictment.

MR. KAUFMAN: On that point, I am in the process of redacting that indictment.

Do you want us to renumber the indictment?

THE COURT: No, that causes too many problems, doesn't it?

MR. KAUFMAN: We can renumber the counts 1 through 25 and then just give your Honor a separate list correlating --

THE COURT: I have my own that I have done of the indictment. I have redacted the indictment myself with red marks and blue marks.

MR. KAUFMAN: I wanted to prepare a clean copy.

THE COURT: You prepare a clean copy but I think you should use the same numbers because I have to tell the jury, since they heard in the opening, of the counts that were involved. I have to tell them before, that certain defendants aren't here any more and certain counts aren't in the case any more, but that has no bearing on the determination of the guilt or innocence of the defendants as to the counts that are still in the case.

MR. KAUFMAN: Fine, your Honor.

MS. HYNES: Your Honor, two things.

One, the defendants I think, neither said in their opening statements, mentioned the number of counts, but, two, I take it from your comment to Mr. Arkin your Honor does not have an objection if the government reads from the indictment?

THE COURT: I have no objection if either person reads, but don't tell the jury they have a right to ask for the indictment because I don't tell them that.

MR. ARKIN: Yes, your Honor.

The ruling on Request No. 3, I want to make specific objection to the fifth line on page 3 of that request which reads, is it the second sentence:

"The statute was enacted" --

THE COURT: That will not be given. You stopped me before I reached that.

MR. ARKIN: Oh.

THE COURT: I had gotten as far as Request No. 3 when Mr. Fleming brought me back to Request No. 2. If he had not interrupted me, I would have added that I will not charge the second sentence on page 3.

MR. FLEMING: Your Honor, I believe that on page 2 that the defendants acted wilfully and knowingly plus included also specific intent to defraud in this case.

THE COURT: I think I will properly charge the jury as to what the statute is and what the law is.

Request No. 4, denied except as charged.

Request No. 5 is denied except as charged.

I gather that you have a typo here, Ms. Hynes, in the third paragraph. It wasn't a "generic term", it was "general term".

You quote from my Medlinger charge, it reads fraud is a general term, not a generic term.

MR. ARKIN: Your Honor, at the bottom of page 1 of Request No. 5, the sentence:

"Thus a scheme to defraud is merely a plan"-- I would make a specific objection to the use of the word "merely".

THE COURT: Overruled.

MR. ARKIN: On the second page of that charge --

THE COURT: I haven't finished.

MR. ARKIN: I am sorry.

MR. FLEMING: May I talk about the first page?

THE COURT: I haven't finished ruling on Reuqest No. 5, I don't think.

Page 2-A and 3 is a summary of testimony. I will give my own version of the summary of the testimony. You can argue however you wish to the jury as to what the testimony is provided it is sustained by the record.

Now you may go ahead.

MR. ARKIN: My objections on Request 5 are to the use of the word "merely", which you have overruled, your Honor, and then on page 2 the statement which appears to be taken from a pretrial decision of your Honor.

I think in the context of this case it would not be an appropriate instruction.

MR. FLEMING: I join in that, your Honor. They have tried this case on the theory of specific falsity rather than misrepresentation, your Honor.

THE COURT: I don't think so. When I say "denied except as charged," I am not using the exact wording of this, but they didn't rely just on specifics. They relied on misleading statements pursuant to an artifice.

MR. ARKIN: There is one other thing.

At the bottom of the page, the proposed government charge reads:

"It is sufficient if the government proves beyond a reasonable doubt that at least one false or misleading representation was made in furtherance of the scheme to defraud."

Now, in the context of this case where we have had testimony about this new growth activity on the northwest or in the northwest and Albuquerque City Planning Commission interest in Rio Rancho, I am concerned the jury may be confused because neither of those two statements which are contained, one in an isolated script and the other in "This is My Land," the brochure, were charged as being misrepresentations with the scheme, nor were they detailed in the bill of particulars.

THE COURT: I think the false and misleading representation takes a broader category than one isolated incident. The isolated incidents may be used as proof of the broader character.

MR. ARKIN: Your Honor, my point is this:

That since there has been some testimony and also some cross examination in the course of the trial it would seem to focus upon this new growth activity in the northwest and since that was neither charged in the indictment nor amplified in the bill of particulars in any way, it seems to me that if this kind of instruction is left in there the jury could very well or possibly focus on this issue.

THE COURT: I thought I just answered that. Your objection is overruled.

MR. FLEMING: I think you have answered my request, if your Honor please. It is that a single misrepresentation in the context of this case would not constitute a scheme unless it was consistent and continuous, pervasive and pursuant to a scheme.

To give an example, if your Honor please, the example I think of is the question of whether the City Planning Commission was interested in Rio Rancho. I think that was used in one 1965 script and in my judgment or my submission could not form the basis --

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THE COURT: Not one isolated incident, it has to be a consistency identified with the plan or scheme. That is inherent in the definition of "scheme."

MR. FLEMING: On page 5 of the request --

MS. HYNES: Your Honor, can I address one point on this. Basically what we are saying there is that the jury must find a scheme and must find that at least one of the representations was in furtherance of the scheme.

THE COURT: In a broad scope, Ms. Hynes, not one little isolated misstatement in a brochure. That's the point that Mr. Fleming has made and I have answered it.

Let's go on.

MR. FLEMING: Your Honor, back on page 1 of request number 5, I have not read your Honor's charge in the Mendlinger case, but I object to the language "resorted to by one or more individuals to gain advantage over another."

That requires deception. That's the first and then, second, a scheme to defraud is merely a plan to obtain something of value by trick or deceit.

We believe it has to be a plan designed to cause injury.

THE COURT: First of all, I think you put undue influence -- "emphasis," not "influence," on that case.

It doesn't go as far as you claim it does.

You have made your point.

MR. FLEMING: All right.

THE COURT: Again, as I said, starting with 2A, I will summarize the evidence as I see it. You may argue however you want, Ms. Hynes, to the jury as to what you think it is supported by the facts.

MS. HYNES: Your Honor, can I just ask one question in this regard. I understand your Honor is going to marshal the evidence?

THE COURT: Yes.

MS. HYNES: I would inquire whether the court is going to go into discussion in the court's marshaling of the evidence with respect to gross density and that area?

THE COURT: I am not going to give this jury hours of what witnesses said. I am going to give them feelings that I think come out of the evidence with some specificity, but I am not going to take item by item of the evidence and say, the government relies on, then list 39 witnesses whom you put on the stand to prove the scheme and each one's testimony to support that. That's not the function of marshaling the evidence. That's for you to argue to the jury.

On the density problem, I would like to know how

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they are going to answer it. If you had special findings in a criminal case like we have in civil cases, maybe we could find out.

We come to page 14. I will nto give the second full paragraph and the bottom of pages 14 and 15 is repetitious of what appears on page 13.

Number 6 is denied except as charged.

MR. FLEMING: We object to the "sophisticated person" language in this case since the evidence is clear not only by the appearance of the purchasers themselves, but also by the invitations sent by, I believe, Rubin, Donnelly, pursuant to various income groups, that they were not dealing with the gullible or the most least educated people.

THE COURT: Argue that to the jury. I won't go into that.

MR. FLEMING: All right.

THE COURT: 6 is denied except as charged.

7 is denied except as charged.

I will not give the second paragraph on page 3. There is no absolute truth in this case, as I understand it, certainly as far as growth or investment is concerned. You may hold the defendants to knowledge of the existence of a study, but you can't hold them to a standard that what the content of the study is is true. That's the distinction and that's the distinction I made way in the beginning of this case when I made some reference to the fact that the defendants were in this business of a hundred thousand acres of a subdivision, they would normally go to find out what's in existence regarding future prospects regarding growth but that doesn't mean that what they saw the content is true.

MS. HYNES: Your Honor, I just have one question with regard to that 1985 report. When it first came in, your Honor said, I am letting it in against the corporation now, and my question is whether your Honor has decided, after hearing all the evidence, that it can be argued --

THE COURT: Yes, it may be used.

MS. HYNES: Against the individuals?

THE COURT: Yes. Let me point out on page 4 that all of the cases you cite, the stock prospectus cases except the famous Lonas cases, none of them are on point in this case.

MR. ARKIN: Your Honor --

THE COURT: Let me finish, please.

MR. ARKIN: I am sorry, I was addressing Ms. Hynes' remark.

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THE COURT: Page 5, the last paragraph will not be given. That takes care of request number 7.

What do you haveto say, Mr. Arkin?

MR. ARKIN: Firstly, I want to address Ms. Hynes' request to use the Avellanet report against all the individuals -- the 1985 report or the Avellanet report.

THE COURT: The 1985.

MR. ARKIN: Excuse me.

THE COURT: Then you come to request number 8 which is the contentions and, of course, I have already indicated how I will go into those.

Yes, Mr. Fleming?

MR. FLEMING: Your Honor, in request number 7 at page 2, we object to the first paragraph there, "wherever there is direct proof available." We believe that's judicial testimony and we object to it.

THECOURT: I am not going to use that language, but I am going to have something like it.

MR. FLEMING: Okay.

THE COURT: That's all I can tell you now.

MR. FLEMING: As your Honor knows, we feel like "few men will be convicted," which are basically judicial testimony, and that's the nature of our objection to that kind of language.

THE COURT: Yes.

MR. FLEMING: We object also to page 5A --

MR. ARKIN: The second full sentence in the second paragraph, your Honor, 5A.

THE COURT: The second sentence in the second paragraph?

MR. ARKIN: Yes.

THE COURT: You know, there's a lot of repetitious material in here. It is going to be covered by just a couple of sentences.

MR. ARKIN: The substance of my objection there was that I didn't think that your Honor --

THE COURT: The government has a burden which they understand from these requests to charge that they have to show bad faith.

MR. ARKIN: I am only objecting at this particular juncture to the definition in terms of near future, far future, present, it is the temporal aspects of the charge.

THE COURT: That's argument to the jury. I am not going into near or far. This is for the jury to determine. They will determine the time limitations within which they think these promises should come true.

MR. ARKIN: Or will come true.

THE COURT: Or will come true. I thought they

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all came true.

MR. ARKIN: That's my argument to the jury, Judge.

MR. FLEMING: We object to the bottom half, "no amount of belief by a defendant," et cetera.

THE COURT: Where are you?

MR. FLEMING: On page 5A of the last half paragraph, "no amount of belief by a defendant," et cetera. It seems to me that --

THE COURT: I won't give that as it is given. I thought I indicated that.

MR. KAUFMAN: Your Honor, one question. When you said that the defendants can't be held to knowledge of the truth of the report, we just want to verify, will you be giving just a general charge on deliberate disregard?

THE COURT: There is a general charge on deliberate disregard, but that isn't what you are talking about.

Deliberate disregard in the cases that talk about deliberate disregard refer to a fact, not to an opinion. Now, if a report exists, that is a fact.

If a report says, in the year 1985, there will be 825,000 population in Albuquerque, that's an opinion, not a fact, and you can't apply the statement of law that you are referring to to that statement.

MR. KAUFMAN: I understand, your Honor.

THE COURT: All right.

Now we get to request number 9. Granted.

Request number 10, denied except as charged.

Request number 11, denied except as charged.

Request number 12, that's covered by 9 and 11.

MR. FLEMING: It is, your Honor. It is saying the same thing.

THE COURT: That's right.

Number 13 is denied except as charged.

Number 14 is denied except as charged.

Number 15, denied except as charged.

Number 16 is denied except as charged.

Number 17 is denied except as charged.

Number 18 is denied except as charged.

Number 19, I don't understand the uncalled witness request here.

Who was uncalled? This is the government's request to charge so my inquiry goes to the government.

MR. KAUFMAN: Your Honor, this is a general charge on uncalled witnesses that are mutually available.

THE COURT: Why should I give it if I don't know of any?

MR. KAUFMAN: There are a whole slew of witnesses who could have been called by either side and both sides maybe arguing to the jury in summation --

THE COURT: The only one I was looking to hear was Geller.

MR. KAUFMAN: There are a number of potential witnesses whose names were mentioned in testimony and in openings --

THE COURT: Defendants, are you referring to any uncalled witnesses? If you do, I will give an uncalled witness charge.

MR. ARKIN: The only one we have is in our charge having to do with an appraiser and that's not really an uncalled witness. That has to do with satisfying the burden.

THE COURT: I am not giving that. You will hear that when I come to it.

I am talking about an uncalled witness on behalf of the government. I referred to Geller because he sticks out like a sore thumb.

MR. ARKIN: Yes, he does.

THE COURT: If you comment on it then I will give the normal uncalled witness charge because he is available to both sides.

MR. ARKIN: Your Honor, we are not going to make

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the argument, at least I am not; I can't speak for Mr. Fleming, I am not going to make the argument of uncalled witnesses except the one in respect to the appraiser.

(Continued on next page.)

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THE COURT: You may make that argument to the jury.

MR. ARKIN: Right.

THE COURT: But that does not call for an uncalled witness charge.

MR. ARKIN: You are right. I understand that, your Honor.

THE COURT: All right. So we understand each other.

MR. KAUFMAN: Your Honor, the government, I think, in its summation, plans on arguing as to why the defendants didn't contradict certain evidence of the government.

THE COURT: Then you are going to be met with the burden is on you and there is no burden on them.

MR. KAUFMAN: Your Honor, the law is clear that the government can comment in its summation that some of its evidence has gone uncontradicted, so long as --

THE COURT: You may. And the Court will charge the jury there is no burden on the defendants, the burden is on you to cover everything.

MR. KAUFMAN: All right.

MR. FLEMING: I hope they will be sufficiently careful to adequately mask the design of that argument --

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THE COURT: They don't want to throw twelve weeks out the window, I don't think.

MR. FLEMING: Maybe they do. In any event, we certainly just go on record. I know the reason why the argument is made, if your Honor please. It is to direct the jury's attention to the fact the defendants did not testify.

THE COURT: The Court has said a statement going uncontradicted can be made to the jury.

MR. FLEMING: I have made it myself.

THE COURT: That doesn't mean that it was true.

MR. ARKIN: Another point here on this, while we are talking about, let me just take a half a moment.

While I agree with Mr. Fleming, we are very concerned about the potentiality of the jury's attention being addressed to the defendants not testifying.

I am concerned here with a comment made the other day by Ms. Hynes, to wit, Sommerholder was not called and Mr. Walsh was not called to contradict Mr. Oberman's assertion or alleged assertion regarding five percent.

The problem with that is, you know, one, they had Sommerholder and they had Walsh in the grand jury.

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Sommerholder's testimony probably would have been to the contrary.

In the grand jury, referring to the five percent, "Those are not our figures," in effect, they are somebody else's figures.

I don't think that it is a proper argument or a fair argument.

Also, we have no burden of going forward, as your Honor just acknowledged --

THE COURT: You are beating a dead horse. I thought I clearly explained my position which covers what you are talking about.

If they say Sommerholder was not called, they will be told that the burden is on them to produce their case and convince the jury the defendants are guilty beyond a reasonable doubt and there is no burden on the defendant to produce any evidence, and, therefore, if the jury wants to believe that they should have called Sommerholder --

MR. ARKIN: My application would be that they be precluded from making that argument.

THE COURT: She runs the risk if she makes the argument of having the charge to the jury as I have indicated.

MR. FLEMING: I think our point is a little more than that in regard to Sommerholder.

He was examined in the grand jury. The government has examined this man under oath in the grand jury and the question is:

"Q You redall, do you not, the study," referring to the Henninger Study, "states on the basis of conversation with individuals connected with Rio Rancho Estates that it was the expectation of the people at Harman, O'Donnell & Henninger, that based upon the rule of thumb in the land sale industry, probably no more than five percent of lot owners would eventually build on their lots? Wasn't that what you were referring to as the amount of land that had to be set aside?"

Mr. Sommerholder's answer:

"A Well, the figures,that they came up with, which are not our figures but the figures they had determined from historic averages."

Ms. Hynes apparently did not in the grand jury ask Sommerholder to confirm or disaffirm Avellanet's version of the conversation with Oberman, but his statement, "Well, the figures that they came up with, which are not our figures but the figures that they had determined from historic averages," certainly comes quite close to a denial by Sommerholder of Avellanet's version of the Oberman conversation.

THE COURT: I think the government is entitled to tell the jury, "You have heard Mr. Avellanet's testimony regarding the statements."

If she goes beyond that, she runs the problem that you have just raised, and it is her job to protect the record, not mine.

MR. FLEMING: I think that is correct.

THE COURT: I hope she is not an assistant as many of them are, "Let's get a conviction and let's go home and let the other side worry about it or let my successor worry about it," because I am not here to protect the record.

MS. HYNES: With regard to the testimony --

THE COURT: I don't see any point of further discussing it, Ms. Hynes.

Request No. 20 is denied, except as charged.

Request No. 21 is denied.

Request No. 22 is denied, except as charged.

And, of course, I will not give that sentence on page 2. That seems to refer to Graham, the president of the bank.

Page 2 of Request No. 22, I will not give that sentence, because that is no longer true in view of Mr. Kaufman correcting the reading.

MS. HYNES: Wait, I'm sorry, your Honor.

You are on Request No. 22?

THE COURT: Page 2, Request No. 22 states, "It may be that those with whom the defendant came into contact previously were misled and that the defendant did not reveal to them his true character."

I don't know anything in this case that comes anywhere near justifying that sentence, except the answer that Graham, the president of the Albuquerque Federal Savings & Loan --

MR. KAUFMAN: Your Honor, with respect to Mr. Graham, I quoted to him two scripts, both of which he said were inaccurate and would have changed his opinion about that defendant's character.

Mr. Graham was called back and one of those scripts were corrected to him, and he said, "No, I believe that would be accurate."

The second script was never asked of him again. His opinion still remains the same, that the second script was an inaccurate --

THE COURT: Whatever the record shows, Mr. Kaufman, you may use.

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MR. KAUFMAN: Your Honor, okay.

But your Honor has said that there is nothing in the record to justify this, and I wish to point out to your Honor that Mr. Graham's testimony still stands that one of those scripts was inaccurate and that if he knew that Mr. Friedman was responsible for producing that script, his opinion as to Mr. Friedman's character would not be the same.

THE COURT: All right.

MR. FLEMING: Mr. Kaufman should read the second question before he argues that.

THE COURT: Request No. 23, denied except as charged.

Request No. 24 is denied.

Request No. 25 is denied, except as charged.

Request No. 26 is denied, except as charged.

And Request No. 27 asking for charges regarding circumstantial evidence and the jury's right to have the exhibits and testimony read, are granted.

I now turn to the defendants requests to charge.

Request No. 1 is denied, except as charged.

MS. HYNES: Your Honor, excuse me. But with respect to the first page, the first sentence, that the Court's function is to tell you the issues of fact that you have to decide, I would take specific objection to that sentence, particularly in light of the fact that your Honor is marshaling the evidence.

THE COURT: I don't use it, but I see nothing wrong with it. I am not going to use it, but I see nothing wrong.

I said denied, except as charged.

Request No. 2 is denied, except as charged.

Request No. 3 is denied, except as charged.

Request No. 4 is denied, except as charged.

I will specifically not give the third paragraph on the first page of that request.

MS. HYNES: Your Honor, also with that request, I object to the mention about the civil case. It is really irrelevant and confusing.

The final paragraph, which goes over onto the next page, referring to defendants --

THE COURT: Since you have read my charge, you know what I use in this regard, Ms. Hynes, and that is exactly what will be used here.

Request No. 5 is denied, except as charged.

Request No. 6 will be denied, except as charged.

MS. HYNES: Your Honor, with respect to Request No. 6, the second full paragraph, the second sentence, the first part of that, "Some circumstantial evidence may be susceptible to more than one inference," that comes precariously close to the two inference rule which the Second Circuit has specifically stated is not a proper charge, and I take specific exception to that language. I believe it is confusing and would run afoul of the Second Circuit case.

THE COURT: Request No. 7 is denied, except as charged.

Request No. 8 is denied, except as charged.

Request No. 9 is denied, except as charged.

I will not give the first sentence of the second paragraph.

Request No. 10 is denied, except as charged.

Request No. 11 is denied, except as charged.

Request No. 12 is denied, except as charged.

Request No. 13 is denied, except as charged.

Request No. 14 is denied, except as charged.

I think Judge Wyzanski's charge is humorous.

Request No. 15 --

MS. HYNES: Excuse me, your Honor.

With respect to Request No. 14, on the second page, in the middle of the last paragraph, when it starts with, "In short, not every agent or employee of a corporation has the authority to bind," and then it talks about control status with respect to the corporation, I know that your Honor, through the course of the trial, has indicated that that is not your Honor's belief, but I bring specific attention to that language.

THE COURT: All right.

Request No. 15 is denied, except as charged.

The fisrt sentence reads, "The prosecution must first establish beyond a reasonable doubt that between 1961 and 1976."

I assume you meant sometime between; in between.

MR. FLEMING: I meant a continuancy.

I think, your Honor, on that, I must say, I would be hard put myself to accept the premise that these defendants could be convicted for their conduc in the year 1968, for example, based upon this indictment and the proof in this indictment if for no other reason, first of all, I think it would be a material variance from what is alleged in this indictment and there would be substantial evidence which wouldhave been received which would not otherwise have been received.

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So I understand what your Honor is saying --

THE COURT: All I give them is the usual charge in the conspiracy count. It does not have to exist from the date it is claimed to exist or to the date that the indictment was filed, which here you have 1976, but I assume the superseding indictment here talked as of the date of the original filing, which would be 1975.

MR. FLEMING: I didn't know that. I didn't check it.

Your Honor, I really did mean or we did mean what we said here in terms of this indictment.

I understand what your Honor is saying, but I would think at least a substantial period of allegedly fraudulent conduct would have to be proved to avoid a material variance and a mistrial.

THE COURT: I think by denying your motion for a judgment of acquittal, I have found that there is sufficient evidence to go to the jury on that issue.

MR. FLEMING: I think the jury would have to be told that while it might not have to run --

THE COURT: They will be. They will be.

MR. ARKIN: Your Honor, also, within the statutory period.

THE COURT: The statutory -- nobody has

raised a statute of limitations here.

I don't know of any statute of limitations problem, Mr. Arkin.

MR. ARKIN: If the conduct, say, changed drastically in 1969, however you may characterize it --

THE COURT: I am sorry, I won't take that argument now when I am ruling on requests to charge. The time to have made that argument was two days ago when you argued at the end of the government's case.

MS. HYNES: Your Honor, just with --

THE COURT: Wait. I am not finished.

The first actual paragraph on page 2 is repetition of what appears on the first page.

Now what do you want to say, Ms. Hynes?

MS. HYNES: Your Honor, on the first page, the second paragraph, the sentence begins, after the string of citations,"Even proof of isolated and diverse misrepresentations," I know we have talked about this, but the sentence as stated is confusing and I just point out that the particular language of that sentence, particularly at the end, is not sufficient to constitute the single scheme to defraud which the indictment alleges, I think it is confusing the way it is stated, but we have discussed the problem.

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THE COURT: Request No. 16, I am denying this. It is a long, rambling request of four pages, most of which is argument to the jury.

I certainly won't charge the jury Paragraph 1 on the first page of Request No. 16. The balance of the page is argument to the jury.

We go over to page 2, the third full paragraph, it says, "This also is true with regard to promises, predictions and erroneous conjecture as to future events, especially where those prophesies relate to prospective or potential profits," I don't think either of the cited cases are in point insofar as this case is concerned.

It is not true, that statement, if the jury finds that on material available the defendants had no reasonable basis to make the prognostication, and that is the ultimate issue in this case.

So the statement as stated here on the facts of this case will not be charged.

The next page is all argument to the jury.

We then go to Request No. 17, which is denied, except as charged.

Again, 18 is sort of long and rambling, containing four pages, most of it is argument to the jury.

I will certainly not tell the jury there is

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always the possibility in such situations that the defendant involved might be the subject of criminal prosecution merely because some few disgruntled purchasers are unhappy while the vast majority of the purchasers have no complaints.

You may argue that to the jury, obviously.

We come to Reuqest No. 19. That is argument to the jury. It is denied.

Request No. 19-A is argument to the jury and is denied.

We come to Request No. 20, which is four and a half pages long.

There is too much wrong for me to grant it, so I am denying it.

For example, you say, "In other words, in considering whether or not a particular defendant participated in a scheme to defraud, you must do so without regard to and independent of the acts or statements of other people," and you go on about, you must determine the issue of participation on evidence of what he did, and that clearly is not so in this regard.

The law regarding schemes is the same as the law regarding conspiracy. I have made the determination that there is sufficient evidence or, rather, by the

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preponderance of the evidence that the defendants may be found guilty based on what has been produced specifically against those defendants.

On the issue of there being found guilty beyond a reasonable doubt, the jury may take all the facts into consideration.

In other words, I apply Calarco and Profansky to this scheme just as the Court of Appeals applied it in conspiracy cases.

Now we come to the second page of that request, the second full paragraph.

I don't know it's relevance in view of my rulings earlier this afternoon striking all the individual's statements. But I still think my general charge will cover the question. But you may think that over for Monday morning, Mr. Fleming, if you wish.

MR. FLEMING: Thank you, your Honor.

THE COURT: We come to the fourth page of this request. The first full paragraph, I will not give the language contained in the second sentence of that paragraph, the first and second sentences in the next paragraph.

On Request No. 21, it is denied, except as charged.

Request No. 22 is denied, except as charged.

Request No. 23 I deny, except as charged in the first paragraph; the rest is all argument to the jury. By the rest, I mean theremaining four and a half, five pages.

Request No. 24 is denied, except as charged.

Request No. 25 is denied, except as charged.

Request No. 26 is denied --

MS. HYNES: Your Honor, I am sorry, with respect to Request No. 24, page 2, when we go into the opinion aspect of that request there, your Honor has already stated that that is argument to the jury but, in fact, the cases are if you state something as an opinion but you know that somebody is relying upon it and it is false, it could be a basis for conclusion in a scheme to defraud.

THE COURT: Say that again.

MS. HYNES: That if you make a statement that it is your opinion that X will happen, that this land is valuable, and, in fact, that is a false statement and you know it is false --

THE COURT: That is not what this talks about. This talks about -- we are getting into the same thing we discussed before.

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The mere fact that there are reports in existence which would support the government's position does not mean it is true and that the opposite said by the defendants is a false statement.

There are opinions voiced by other people upon which the government relies to have this jury draw the conclusion that those statements are true, but the mere fact that somebody said them does not make them true.

That is the issue for the jury.

We are now up to Request No. 26.

That is denied.

As I read this, you are saying that the approval by state agencies shows that the defendants believed the review constituted approval. That's what it says.

MR. ARKIN: Yes.

What we are doing, if your Honor please, is not that review constituted approval, but that on the issue, in effect, of their good faith --

THE COURT: Oh, no, no, you did that earlier and I let you do it.

But on a request that the defendants believed that the approval or the passage by the state agency "constituted approval of the representations" I will not tell the jury.

In fact, I will tell them just the opposite if you so refer to it in your summations, and I said that to you in December.

MR. ARKIN: No.

What the point of this charge is, so there will be no confusion, is that their belief with negative intent, that is all we are saying there.

THE COURT: You did that in an earlier charge.

MR. ARKIN: I see, your Honor. All right.

THE COURT: And you can use it in that regard.

But you cannot tell this jury that they had the right "they" meaning the defendants, had the right to believe that, for example, the State of New York approved this document and the statements contained in it.

MR. ARKIN: But I might argue that if there was evidence that they believed it, that would go to their good faith or intent.

THE COURT: No.

You can say the fact that they complied with the law and circulated those reports would show their endeavor to comply with the law. That's what you requested

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earlier and that you get.

But you can nowhere draw any inference that these defendants had any basis upon which they could believe that the State of New York approved the statements in that prospectus.

MR. ARKIN: Your Honor, I would only refer in my summation to precise testimony, such as Perlmutter and Mandel and Lederman, Perlmutter in particular saying --

THE COURT: Perlmutter is the only one and you got that in with a twisted question you put to him on approval.

I have gone through this record on this point last December.

MR. ARKIN: I know that, your Honor. I don't mean to push it.

THE COURT: Don't do it, Mr. Arkin, I am telling you, because I will tell the jury you are wrong.

MS. HYNES: Your Honor, the --

THE COURT: No basis for anybody in this business to have any inference that the approval by the State of putting the number on approved what was said in the document, none.

We come to Request No. 26, 27, 28.

I gather No. 28 is no longer in the case in view of my rulings today.

What you have in this case and I think I indicated when I completed my ruling on requests to strike specific evidence, is the dinners, the presentations, the scripts, the films, the procedures in handling the dinners, that is what this case is about, in addition, of course, to whatever the documents were as to growth and what not, the procedures on the tours.

I think I have stricken, except the few that I think don't come within the rule, the specific representations, three to five years and so forth, so I don't think this is in the case any more.

MR. FLEMING: You will be advising the jury of that before summations, if your Honor please?

THE COURT: No. This is a double-edged sword. If you want me to, I will.

I think it cuts both ways. You may talk about it overnight, and Ms. Hynes may talk about it, and we will see what you want on Monday morning.

I will not tell it to them unless I am requested to by either counsel.

Request No. 29 is denied, except as charged.

I want to point out that when I referred to high pressure techniques, I will say high pressure techniques alone is not fraud, but high pressure techniques in conjunction with other activities can be taken into consideration to prove the fraud.

Price of land is not evidence of fraud. I will grant that only if the government is going to argue it, but that was stricken from the indictment back on October 27th.

Request No. 31 --

MR. DEVORKIN: Can we have a moment, your Honor?

MS. HYNES: Your Honor, there is an allegation in the indictment that the defendants made a representation --

THE COURT: What is it?

MS. HYNES: The defendants made a representation --

THE COURT: I have the indictment in front of me. I want to know whatyou are talking about.

MS. HYNES: It is the quote on low markup policy.

It appears on page 12 -- we have renumbered the pages.

Paragraph 2(V) talks about, "Only our low markup large volume policy makes such an outstanding land bargain possible."

THE COURT: Markup depends on more than just what they paid for the land and what they were selling it for.

There are a lot of costs involved that are put on to a raw product.

If I make a suit, the cost of the thread may be cheap, the cost of the cloth itself may be cheap, the cost of other materials may be cheap, the cost of labor goes into it, the cost of advertising goes into it, the cost of sales goes into it.

I will grant this if you argue that point, Ms. Hynes.

Besides, you have so much else in this case, that one little thing is not the reed upon which will make or break your case.

MS. HYNES: I understand. But there is evidence in the case and we did mention in the opening about the initial price and some evidence --

THE COURT: I know, but that is one piece of evidence out of 7,000 pages.

No. 31, that is all argument to the jury.

No. 32, this is your appraiser point, isn't it?

MR. ARKIN: Yes, your Honor.

THE COURT: I don't think that is a failure to call type of case.

You may argue it to the jury there is no proof, but I don't think I will make it a failure to call.

I don't think that type of reference calls upon me to make a charge to the jury on failure to call a witness.

MR. ARKIN: That is denied?

THE COURT: Yes.

MR. ARKIN: That is --

THE COURT: In fact, there are cases in the Court of Appeals that say failure to call an available witness, the Judge can sit here and do nothing if he wants to. There are cases like that, you know, inthe Court of Appeals.

The Court of Appeals in this area is a little blurry as to what your are supposed to say.

I think there are old cases which say, "You have a perfect right not to open your mouth if you don't want to."

In other words, the witness is unavailable, both sides can argue anything they want to the jury and the Judge can keep his mouth shut and that is perfectly good practice.

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ROBERT B. FISKE JR.
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U.S. ATTORNEY
SO. DIST. OF N.Y.

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